A Profitable Booke
OF
Mr. *Iohn Perkins*,
Sometimes Fellow of the Inner
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And now Tranſlated out of French into Engliſh for the benefit of young Students, and others,

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FINIS.

GRANTS.

CHAP. I.

1. FOrasmuch as unto a Grant, a Grantor, Grantee, and a thing granted are requisite and necessary: First, therefore it behoveth to shew what persons may grant and what not; and of such persons as may grant, by what names they may grant: And then what persons may bee Grantees, and by what names they may bee Grantees; And then it behoveth to shew of the thing to be granted; And as it, that First it shall be said what things shall bee granted by deed, and what without deed: and then what things a man may grant or charge: and then what P 13.h.8. 12.

what things shall passe by the grant of o-ther, &c.

Bract. l. 2. case 1. 2. And as to the knowledge, what persons may grant, and what not, it is to be understood, that some grants of some persons are void; and some grants of some persons are voidable by themselves, and their heires, and by those who shall have their estates for ever. And some grants of some persons are voidable by the Grantors only during certaine time, and some grants of some persons are voidable after the death of the Grantor by the heires of the Grantors, and not by the Grantors or by any other person during the life of the Grantors, &c.

H. 14 h. 8 16. 3. And know, that the grants of all dead persons in Law, as Monks, Friers, and Canons professed and such like others are void, if they be not made by the Soveraignes of such houses, or by matter of conclusion, or otherwise that it be in spectall cases, and therefore if a Monke, Frier, or Canon professed, who is not soveraigne of the house, grant unto mee an Annuitie Dee pell. the grant is void notwithstanding that hee be soveraigned afterwards, or made Soveraigne of the said house, or of another house: or created a Bishop, &c.

M. 2. h. 3. 5.

H. 32 h. 6. 31.

4. And if a commander of the Hospitall of Saint Iohns of Ierusalem in England, grant a rent charge issuing out of land which he hath in his commandry without the knowledge of the Prior, the grant

grant is void, &c. But if a Monk or a Frier &c. by the commandement of the Abbot or Prior who is soveraign of the house and in the name of the Abbot or Prior may make a grant, and the same shall bee good, if the same bee delivered as the deed of the Abbot or Prior by their assent, &c. If I. S. being seised of an acre of Land, in see ioynt in the grant of a Rent issuing out of the same acre, with a Monke; the same is void as to the Monke, and good against I. S.

P.10.E.4 4.

14. H.4. 32.

5. But if a Monke or other Religious man be farmour unto the Kings Maiestie, and made a sale or a bargaine of a thing concerning his farme, such sale or bargaine is good, and upon that hee shall have a Quo minus against the vendee or bargance in the Exchequer, &c.

H.8. h.5. 6.

M.2. h.4. 7.

6. And if a Feme covert grant an Annuitie by deed, the grant is void. And if a man be seized of Land in the right of his wife, and his wife grant a rent issuing out of the same Lands without the knowledge of the husband, this grant is void, & so it is notwithstanding that the husband had conusance of it, if it be made and delivered without his assent, or with his assent, if it bee made in the name of the wife and not in the name of the husband. And notwithstanding the husband were abroad out of the Countrey at the time of such grant made and delivered, so that it is not known whether he be alive or dead, yet such grant is void if the husband be li-

M.1. h.6. 12.

M.[illegible] 28.

H.4.h.4. 13. H. 2.h.7. 15. ving, insomuch as if the grantée by force of such grant enter into the land and distraine, the husband at his returne shall have for his entrie and distresse an action of trespasse.

T. 13. E. 2. Execu. 119. P. 18.h.8 4. 7. But if a single woman be an executrix, and she take a husband if all the debts of the Testator are satisfied and paid, she may deliver the legacies of the Testator out of the goods of the Testator in dispite of her husband. And if the debts and Legacies of the Testator bee satisfied and paid, she may give away the goods of the Testator which remaine to pray for the soule of the Testator in dispite of her husband. But such deliverie of Legacies or gift to pray for the soule of the Testator, by the wife, before that the debts of the Testator are satisfied and paid, is void, in so much that the husband shall have thereof an action of trespasse. For that it is but a wasting of the goods of the Testator, if it be so that the goods of the Testator which remaine, will not extend to satisfie the debts of the Testator, &c.

T. 47. E. 3 28. 8. And if there be a difference betwixt the husband and the wife, by reason whereof certaine lands of the husband are assigned unto his wife by the friends of the husband, and by his assent, and the wife grant a rent charge to be issuing out of the same lands unto a stranger the grant is void, &c.

9 If a single woman, being seised of a carue

carue of Land, cause a deed of a grant of a rent charge to be issuing out of the same Land to bee made, and thee deliver the same deed unto a stranger as an Escrowle, upon condition that if the Grantes goe to Rome and return back againe before the Feast of Easter then next following, that then he shall deliver the same Escrowle as her deed unto the grantee; the woman marieth a husband, and before the Feast of Easter, and dureing the coverture, the grantee go to Rome, and returne back, and the estranger delivers the escrowle unto him as the deed of the woman; This grant is good, notwithstanding that the husband were seized of the land in the right of his wife, before that that the grant tooke effect, as the deed of the woman; at which time she was married to the husband: and the cause and reason is, Because that unto same purpose it shall have relation unto the time from the first deliverie, that is to say, when it was delivered as an escrowle, insomuch that if the wife in such case have infeoffed a stranger of the said Land before the condition performed, and afterwards the grantee had performed the condition, and the stranger had delivered the escrowle as the deed of the woman unto the grantee, the Feoffee should have holden the Lands charged, &c. because that at the time of the deliverie of the deed as an Escrowle she was a single woman.

10. But in the said case, The grantee

shall not have any Rent by force of the said grant, before the last deliverie, that is to say, when it tooke effect as the deed of the woman, and so to such purpose and intent, shall not have relation unto the first deliverie, S. when it was delivered as an Escrowle, &c.

11. But in the same case, if the woman had beene married at the time of the deliverie of the deed as an Escrowle, and her husband dyed, and the grantee performe the condition, and the stranger deliver the grant unto him as the deed of the woman; notwithstanding that the grant is voide to charge the woman, Causa patet. See more of this in the Chapter of Deeds. and so it appeareth that some grants of some persons are void, &c.

12. Know that some grants of some persons are voidelesse by themselves, by their heires, and by those which shall have their estates forever. And as to that, know that it is a common knowne Rule. That all such gifts, grants or deeds made by an infant, which doe not take effect by deliverie of his hand, are void; But such gifts grants or deeds made by an infant by matter in deed, or in writing, which take effect by deliverie of his owne hand are voidable by himselfe, and his heires, and by those which shall have his estate.

13. And therefore if an Infant make a deed of Feoffment, and a letter of Attourney unto a stranger to make liverie of seisin, and he make liverie of seisin by force

force thereof, he shall be taken for a disseisor. And if an infant being seised of a Carue of Land, grant a rent charge to be issuant out of the same Carue by deed, and the grantee distraine, he shall punish him as a trespasser, notwithstanding that the infant did deliver the deed with his owne hand. But in such case the infant nor his heire, nor his seoffe cannot against such a deed in pleading say, That he did not grant by the deed, for that the deed is not void, but is voidable; as to say that the grantor was within age, &c. at the time of the grant, &c. P.18.E.4. 1. P.2.E.4. 7

14. If an infant give a horse, and doe not deliver the horse with his hand, and the donee take the horse by force of the gift, the infant shall have an action of trespasse. But notwithstanding that maxime, If an infant bee an executor, the payment of the debt of the Testator by him is good and effectuall, &c. And an infant shall be bounden by all acts done by him dureing his nonage, which acts are for his advantage, if not in some speciall cases. And therefore if an infant at the yeares of discretion make a Bond for his necessarie meats and drinke, or for his necessarie apparell, or for his scholling, hee shall not avoid the same, Causa patet. and so it shall be in like cases. T.25 E.3. 45. 1.

15. And a grant made by an Infant of the age of 14. yeares of a Free Chappell shall be good and effectuall, because that he himselfe cannot have it, Quere, it P.26.h.6. Grants.

the Infant in such case bee but of the ag of 14. yeares, what shall become thereof because he hath not discretion. And an Infant at the ags of 14. yeares may present unto an Advowson which appertains unto his presentment, and it shall be good, because hee himselfe cannot have it, and because that after the sixe moneths past the Ordinary shall present for Lapps, &c.

16. All Feoffments, Leases, gifts or grants made by duresse are voidable, and not void by the parties themselves, by their heires, and by those who have their estates, &c. And therefore if a man seised of lands, grant a rent charge by duresse and after lease the lands for life or yeares unto a stranger, and the grantee distraine for rent behind before the lease, or after the lease, the lesse shall have an action of trespasse: So shall have the heire of the grantor, if the land had descended unto him. But know, that alwaies it behoveth, that if they shall have trespasse, that they bee seised in deed of the land or tenements where the trespasse is supposed, at the time of the trespasse done.

P. 41. E. 3. 17. If a man seised of a Carue of land, give the same in tayle by deed, and make a letter of Attourney to make livery of seisen, and all is done by duresse of imprisonment, and liverie of seisin is made by force thereof, now is this a disseisin unto the donor: but that doth not prove, that the deed of Feoffment, and the letter

of

of Attourney are void, for then the donor might traverse them, and that he cannot doe, &c. And know that the imprisonment ought to be made for the making of the deed, &c.

18. And therefore if a man bee imprisoned upon an execution of a statute merchant, now a grant made by him unto a stranger, that he be assistant unto his deliverance is good and not voidable, because that he was not imprisoned for the same cause. And if a man threaten to murder me if I doe not grant unto him an Annuitie of twenty shillings, and for feare of death I grant unto him an Annuitie of twenty shillings, now is this grant voidable. But if a man grant one Annuitie for a threatning of carrying away his goods, this grant is not voidable for such threatning, because he may have an action of them, if they be taken, &c. 8.Ass. pl. 25. 11.R.2. dures, 13. M.7.E.4. 21.

19. Some grants of some persons are voidable by the grantors only during a certaine time; And therefore if an Infant grant a rent by fine, this grant is voidable by himselfe during his nonage by writ of errour; but if he doe not avoid it during his Nonage, it is good for ever. and notwithstanding that he dye during his nonage before that he hath avoided it yet his heire shall not avoid it. Quere if the conusor dye depending the writ of errour. M. 18. E. 4. 13.

20. And if a man be seised of lands in the right of his wife, and the wife as a feme sole

M.7.h.4. 23. 17.As.pl. 17. M.17.E.3 52.

sole without her husband grant a rent by fine to be issuing out of the same land, this grant shall not bind the husband dureing the coverture. But if the husband dye before he and his wife shall reverse the fine by error, the wife shall be bounden by this grant.

21. Some grants of some persons are voidable after the death of the grantors by the heires of the grantors, and not by the grantors nor by any other person during the life of the grantors, And therefore if a man of Non sanæ memoriæ being seised of a Carve of Land, grant a rent issuant out of the same Land in fee, & dye & his heire enter and the grantee distraine for the rent behind, the heire shall have an action of trespasse: But if the grantee had distrayned in the life of the grantor for the rent behind, the grantor should not have an action of trespasse, for he cannot avoid his deed by disabling of himselfe.

P.12.E.4 8. H.39.h.6 42.

22. But if a man being of good memorie make a Charter of Feofment of certaine lands whereof hee is seised, and make a letter of Attourney at the same time to make liverie of seisin, but before deliverie of seisin, by some sicknesse hee become mute, and by signes which hee makes, it appeareth, That liverie of seisin shall be made, by force whereof livery of seisin is made, that is a good feoffment.

23. But if a letter of Attourny to make livery of seisin is made of certaine Land, by a man of unsound memorie, and the

he Charter of feoffment of the same
and was made before when hee was of
good memorie, and then livorie of seisin
is made by force of the letter of Attourny
without other assent of the Feoffer, and
the Feoffer dye. now his heire may 17. Ass. pl.
enter upon the Feoffee, but the Feoffor 17.
himselfe in his life cannot enter.

24. All matters of Record to which a man of not sound memory is partie, his heire shall not avoid for the cause that his father, &c. was of, Non sanæ memoriæ, &c. And therefore if a man of Non sanæ memoriæ grant a Rent by fine, or bee bounden in a recognisance, &c. his heire shall not avoid such matter, by saying that his father &c. was of Non sanæ memoriæ.

25. And know, that if a man be borne dumb but can wel heare, such a man at full age by deliverie of his hands by signes, is without deliverie by signs. And a man that is borne dumb and deafe may make a guift, if hee have understanding. But it is hard that such a person should have understanding. For a man ought to have his perfect understanding by his hearing. yet diverse persons have understanding by their sight, &c. And a man borne dumb and blind may have understanding: But a man that is borne blind, deafe, and dumb, can have no understanding, so that he cannot make a gift or a grant.

26. A Bastard may make a grant as an other person may. And a man attainted of Felony or murder &c. may make

2.Aſſ p. 25. A grant of a rent or common, or a feoffment, &c. and the ſame ſhall bind all perſons but the king for his time, and the Lord of whom the land is holden when his time ſhall come.

27. And as unto this matter. Know that Attainder of Felony, or of Murder, &c. is commonly ſaid in three manners, that is to ſay, by utlagery, by verdict, and by confeſſion. But upon every of them iudgment ought to be given, otherwiſe it ſhall not be ſaid an attainder.

28. And know, That Attainder by utlagery ſhall have relation unto the Exigent as unto lands and tenements, ſo that a feoffment of the Land or grant of a rent before the exigent awarded by him that is attaint in ſuch manner is good: 30.H.6,5. And Attainder by verdict ſhall have relation unto the time of the Felony committed according to the ſuppoſall of the Endictment, as unto lands and tenements; and ſo ſhall have an attainder by confeſſion.

41.Aſſ.p. 13. 29. But all the Attainders as unto the goods ſhall have relation but unto the Judgement given. So that, A gift made of goods by ſuch a man before the iudgement is good. Alſo there is an Attainder by Act of Parliament, And a man outlawed in treſpaſſe may make a gift of his goods, but the ſame is void to binde the King but good to binde the partie. And a gift grant or feoffment by the Kings villaine is void to binde the

King

king, Quia nullum tempus occurrit Regi. But the same is good to binde the partie himselfe. But a gift of the goods of the Villaine, of a common person made by the Villaine, before seisure of his Lord, is good against all persons, for the title of the Lord in the goods of his Villaine, doth not commence but by the seisure, and the title in the Lands of his villaine, doth begin by his entry, and of Rent, Reversion, common, Advowson of a Church by claime, and of common issuing out of the land of the Lord by extinguishment, and of a Rent issuing out of the Land of the Lord by Retainer or Extinguishment. And if any Villaine have a Villaine, I cannot have him before seisure. 35. E. 3. villain 12

30. And yet If Lord and Tenant be by knights service, and the Tennant die, his heire within age and a stranger take him away; the Lord shall have a ravishment of ward, notwithstanding that he never seised the ward and the reason is because that the title of the Lord in the Ward doth begin by the death of his Tennant, and the bodie of the Infant is transitorie. But the Lord shall not have a Writ of Electione Custodie for the Land before entrie, because that the Land is not transitorie. 11.14.h. 8.12.

31. And

31. And know, that the grants of diverse persons cannot be good in perpetuitie without the assent of others by way of grant, confirmation or otherwise, &c. As the grant of the Deane without the Chapter, and the grant of an Abbot without his Covent, and the grant of the Maior without the Communalte; and if it shall be of Master of a Colledge, and of all others which are bodies politike; and have a common seale.

P.11.E.4 13. 32. And all those which are recited who have a tayat possession with their head, as the Chapter with the Deane, &c. Grants made by such persons to charge their possession, which possession they have in common is void to charge the lands of other persons with a distresse, but his owne. As put the Case A Deane grant a rent issuing out of land which hee holdeth in common with the Chapter, now by this grant, the cattell of the chapter are not lyable to distresse. And in that case, if the Deane be created Bishop, the grant is determined as to charge the possesson. But if the grantee hath not avowed upon the land, as upon land chargeable to his distresse in a Court of Record, he may charge the person of the Bishop in a writ of annuitie, if the grant be not made under a speciall proviso that it shall not charge his person.

39.E.3.21 3.H.7.11

33. But if an Abbot grant a rent charge in his owne name without the assent

sent of the Covent, and the Abbot is deposed, and another Monke is made Abbot, and he who is deposed is created Bishop: Now the Grantee shall not charg his person in a writ of annuitie, because that when he was deposed he was a dead person in Law, and not of abilitie to bring any action, or to bee sued in such case, and so by his deposing the grant was determined to charge his person, and also to charge the possession. But if the grant were by Fyne, the possession shall bee charged: But when the Deane was created Bishop, he remained alwayes of abilitie to be sued, &c. And if the Abbot after the grant and before he was deposed had beene created Bishop, then the grantee might well charge his person in a writ of Annuitie, Causa patet. &c. M. 16. E. 3. Abbe. 8.

34. The grant of a Rent to bee issuing out of the Glebe Land by the Ordinary only, is void to charge the Glebe land of the Parsonage, and such a grant made by the Patron sole is void, to charg the possession of the Glebe Lands, but such a grant made by the Parson alone is good to charge the Glebe, during the time he is Parson. But if the Parson resigne his Benefice unto another man who is instituted and inducted, such grant is determined as to charge the Glebe land. &c. But perhaps hee may charge the person of the Grantor in a writ of Annuitie. &c. H. 33. E. 3. 4.

35. But the Parson Patron and Ordina-

dinary by their grant may charge the Glebe land in perpetuitie. And the Abbot and Covent may charge the lands of their house in perpetuitie, so may the Deane and Chapter, the Maior and Comminaltie. Mutatis mutandis. And the Patron and Ordinary in time of vacation may by their grant charge the lands of the Parsonage, &c. And diverse other persons may grant who are not here recited nor mention made of them.

8.E.4..14 36. Now it is to shew, by what names such persons who have abilitie to grant, may grant. And as unto that, know. That the name of the Grantor is not put in the deed to any other intent, but to make certainty of the Grantor, And therfore if the Duke of Suffolke by the name of Duke of Suffolke without his name of Baptisme grant Annuitie, Rent common reversion, &c. it is a good grant, because there are no more Dukes in England of ye name. And a grant of an annuity by an Abbot by the name of the foundation without his name of baptism, is good, if there be not any more Abbots in England of the same name of Foundation, so as the certainty may be knowne who is the grantor.

37. If Father and son are of one name and the Father grant an annuitie by his name without any addition, this is a good grant, for when there is no addition it shall bee intended the grant of the father. If the sonne in such case grant one

annuitie

Annuitie by his name without any addition. (I conceit) such grant is good: For if the grantee bring a writ of Annuitie against the sonne, he cannot helpe himselfe by any meanes, for if he deny the deed, it shall be found against him, &c.

38. But if I.S. grant Annuitie by deed, and in the deed the firname, scil. S. is, but not his name of Baptisme, this grant is not good: and if I. S. grant annuitie by his contrary name of Baptisme, viz. by the name of T. S. some thinke this grant is not good, because that the deed of Thomas cannot be the deed of John, for a man cannot have two names of baptisme, and so they conceive the grantor may deny the deed. 3.h.6.26.

39. And some are of contrary opinion for when they are at issue upon the deed, the plaintiffe may give in evidence the day, peare, and place, where the plaintiff delibered the same as his deed, &c. then the grantor hath not any thing to helpe him, but to say, that his name is John, and not Thomas, and so not his deed. Now they say, That the plantiffe may demurre upon this evidence, forasmuch as he hath not gainsayed the delibery of the deed as his deed, they say, that he shall be concluded to say that his name is other but as the deed doth suppose. Ideo Quære. M.9.E.4. 45.

40. But if I. S. reciting by his deed that his name is I. S. by the same deed grant annuitie by the name of Tho. S. 3.E.1.Litin. Not. Esto.132.

this is a good grant, for the Writ shall be brought upon the whole deed. And if Alice at Style reciting by her deed, that she is a Feme covert, (and in truth she is a Feme sole) grant annuitie &c. it is a good grant, for that is but a void recitall, and the grantee need not put that in his writ, and that cannot be a conclusion to him when he sheweth the deed. And so shall it be if I. S. Knight, reciting by his deed that he is yeoman grant annuitie &c.

41. But if a feme covert reciting by her deed that she is a feme sole grant annuitie, this is a void grant, for she shall not be concluded by this recitall. &c. But if a man who is baptised by the name of John, by the same name at his full age grant annuitie, and afterward is confirmed by the name of Thomas, now his name of baptisme is changed, and yet the grant is good; and if a feme sole grant to me annuitie, and afterwards take a husband, now she hath left her surname, yet the grant is good.

9. E. 3. 14
19. E. 2. fol. 18.

42. The grants of such persons which are good without name of baptisme, notwithstanding that such persons name themselves by contrary names of baptisme, yet their grants shall be good. And therefore if an Abbot grant common in his lands by the name of Richard Abbot, &c. and his name is Robert, this is a good grant, if there be not any more Abbots of the same name of foundation. And such things as passe by Livezie, as

27. E. 3. 86.

Land

Land, &c. notwithstanding the deed of feoffment bee made of that by contrary name of baptisme of the Feoffer, and by contrary name of baptisme of the Feoffee, it is a good feoffment if liverie of seisin be made by the feoffer unto the feoffee, and it takes effect by the livery, and not by the deed, &c. And if a man give unto me his horse by word, and makes to me a writing of the same by his contrary name of baptisme, and by my contrary name of baptisme, it is a good gift by word, but not by the writing, &c.

43. Now is to shew, what persons may be grantees, and as to that know, That feme covert may bee a grantee, and a grant made to a feme covert shal bee good and effectuall untill her husband hath disagreed. And therefore if a rent charge bee granted unto a feme covert, and the deed is delivered unto her, her husband not knowing thereof, and the husband die before any disagreement made by him, and before any day of payment, now the grant is good, and shall not be avoided, to say that the husband did not agree &c. But the disagreement of the husband ought to be shewed. 15. E. 4. 2

44. If a feme covert be enfeoffed of an acre of land, her husband being beyond the sea; and her husband returne, and is not content with the feoffment made to his wife, and will not suffer his wife to take the profits of the lands, nor to continue seisin of the same land, but causeth

her utterly to relinquish and refuse the seisin and occupation of the land, and hee himselfe utterly refuseth to occupie the land, now by this meanes hee shall discharge himselfe of the dammages from the time that his wife and hee did refuse the occupation of the Land in a writ of entry in the Per, brought against him and his wife, in case the feoffer of his wife were a disseisor. But for the time that his wife doth occupie the land, hee shall answer dammages, tamen quære, &c.

45. But know, that by this refusall of the occupation of the land by the husband and the wife, the freehold is not out of them, if no other person enter into the
26.E.4,4. land, but they remaine Tennants as to use an action &c. But if Lord and Tennant are, and the Lord marryeth a wife, and the Lord being beyond the Sea, the Tennant doth enfeoffe the wife of the Lord and a stranger of the tennancie,
10.E.4,21 and the Lord returne and distreine the cattle of the stranger for his rent, now by this distresse the wife is out of possession of the land, and the possession doth wholly remaine in the stranger, who is the other feoffee; for the taking of the stresse by the husband is a sufficient disagreement that his wife shall not take by the Feoffment: for otherwise the husband should be greatly mischiefed, For, for all the time that his wife shall be adjudged in possession of the Tennancie,

his

bee himselfe is seised of the tennancy in the right of his wife, so that for all that time hee shall not have the Rent of his Seignorie, if any day of payment of Rent bee encurred in the meane time, tamen quære &c.

46. A feme Covert may be a disseiseres notwithstanding that her husband do not assent to the same, and the husband shall be charged with the dammages in assise brought against him and his wife. But if the husband disseise another man to the use of his wife, and the wife agræe unto the same, yet the freehold shall not bee said in her. And to this purpose, there is a difference when the wife hath right of entry, or title of entry into any land, and when not. And therefore if a sole woman be disseised, and she take husband, and the husband enter, now by this entry the freehold shall be adiudged in the wife, because she had a right to enter. 8.b.6.14. 44.E.3.9.

47. And if a woman sole enfeoffe a stranger by deed indented upon condition, the condition is broken, the woman takes a husband, the husband enter upon the feoffe, by this entre, the freehold shall be said to be in the wife, because þ she had title to enter. And it is called title of entry, because that she cannot have a writ of right against the feoffe, for shee hath departed with her right by the feoffment which she cannot bring back without entry, which ought to be for the condition broken, &c. And in the case of disseisin, she had right

of entrie, in so much as she might before the coverture, or thee and her husband might after the coverture, have a writ of right against the disseisor, &c. And an infant may be Grantee, Feoffee, Obligee, Resignee. And an Infant of the age of discretion may bee a disseisor by his actuall entrie.

48. But if I. S. disseise a stranger unto the use of an Infant, the freehold shall not be in him before his agreement. But if an infant hath right, or title to enter into an acre of Land, and a stranger enter to the use of the Infant, now the freehold shall bee said to bee in the Infant before his agreement. And so shall it be of a man of full age. And a man attainted of Felony, Murder, or Treason, may be Grantee, and a Clarke convict may be grantee, and a man imprisoned may be grantee, &c. and the Kings villaine may be grantee, and an alien may bee grantee. And a man outlawed in a personall action may be grantee, and a bastard may be a grantee or a purchasor, but a bastard cannot bee heire, nor have heire without issue of his body begotten.

49. But if a bastard eigne who is mulier in the spirituall law, continue possession in lands or tenements as heire to his father all his life time, and dye without interruption of his possession, his issue shall hold the land for ever against the mulier; and if such a bastard enter into an acre of land after the death of his father

ther, of which acre his father dyed seised in fee, and the bastard doth give the same acre in taile to hold of him and his heires by twelve pence, and dyes seised of the reversion without interruption, this dying seised shall make his issue able in law to hold the land against the mulier, if such a bastardeigne, enter after the death of his father into land whereof his father dyed seised in fee, and is impleaded of the same land and vouch, &c. and the vouchee enter into warranty by force of the lien made unto his father and his heires, and proces continueth untill the demandant hath iudgement to recover against the bastard, and the bastard hath iudgement to recover over in value against the vouchee, and either hath execution against the other, and the bastard dyeth seised of the land which he had in execution, quære whether the mulier shall fauxifie this recoverie, &c.

50. If a man hath issue two daughters whereof one is a bastard by our law, and mulier by the spirituall law, and dyeth seised of one acre of land in fee, and both the daughters, that is to say, the bastard and the mulier enter into the same acre and occupie as one heire to their father, and the bastard dyeth seised without interruption, it is said, that her issue shall have the halfe of the acre as heire to his mother, tamen quære, because the other sister did enter. 2. E. 2. bastard 19.

And know. That an Abbot may bee

Grantée, and Deane and Chapter, Pa-
5.h.7. 25. tor and Comminalte may bee Grantees:
21.19.h.6. but a Monke or Frier professed, &c. can-
25. not bee Grantees if hee bee not Sove-
raigne of the house. But he may be exe-
cutor with the assent of his Soveraigne;
and he may be farmour to our Lord the
King. A man of unsound memorie may
be Grantee; and divers other persons may
be grantees, who are not here specified.

10.E.3. 52. It is now to shew, by what names
45. Grantees may bee. And as to that, know.
M.27.E.3 That there ever ought one to be named
87. in the beginning of the Grant, who may
32.h.6. take by force of the grant, otherwise the
Fesli.9.9. grant is nothing worth. And therefore, If
T.1.h.7. a man grant annuity unto the right heirs
31. of Iohn at Stile, and Iohn at Stile be living
at the time of the grant, the grant is no-
thing worth for there is not any such per-
son at the time of the grant; for Iohn at
Stile be cannot properly have an heire du-
ring his life. But if a rent charg be gran-
ted unto I.S. during his life the remain-
der in fee to the right heires of T.K. and T.
K. be living, and the deed is delivered unto
I.S. now ỹ remainder is good, conditionally
sc. if T.K. be dead when ỹ remainder falls, &
hath heire, then is it good, otherwise not;
And so, if Land be leased for life, the re-
mainder to the right heires of I.S. who is
alive at the time of the lease, &c. And the
reason is, because that there is one na-
med in the Lease who may take im-
mediately in the beginning of the lease.

53. But

53. But if a rent be granted for life unto the right heires of I.S. who is alive, the remainder to T. K. now all the grant is void because there is not any person who may take immediatly, & ꝑ remainder cannot be good but in respect of ꝑ particular estate, if not in speciall cases, & so &c. And if a man seised of a rent charge in fee, grant the same rent unto a stranger for life, and the tenant of the land attorne, &c. And afterwards by another deed the grantor grant the reversion of the same rent unto the right heires of I. S. who is alive, this grant is void, because that there is not any person who can take; But if I.S. had been dead at the time of the grant of ꝑ reversion then the grant had been good, and to know that these words (right heires) may be the name of the grantee. 2 E. 3. 1.

54. And if I.S. have issue two sons, and a rent is granted unto the first son of I.S. and not by any other name, it is a good grant if the deed be delivered. But if I.S. hath not any issue, and a rent is granted unto him who shall be the first issue of I. S. whether it bee son or daughter, this grant is void, causa patet. 30.E.3. 18. 2.E.3.1.

55. And in ancient time a Grant made Abbatiæ beatæ Marie, &c. Et Monachis ib. Deo servientibus had been good, So had it beene of a Grant made Deo & Ecclesiæ, of such a place. But such Grants are not good at this day, because there is not a person named who can take by force of the grant. And a grant 39.Ass.p. 20. 33.h.6.23

Grant made to such an abbey, and to the Sacrifice of the same abbey, is void at this day. And so it is if a grant be made to such an abbey, and to three or foure Monkes of the same abbey, although their names be named, &c. for that they are no ad persons in law. But a grant made unto the Churchwardens of such a Church, without naming of their names is good. But a grant made unto three or foure of the parishioners of the parish of St. Mary in such a place is not good: But a grant made unto the bishop of Winchester without other name is a good grant; and a grant made unto the next of the blood of I. S. is a good grant.

49.E.3. fests.98. 22 h.7. 27. 20.E.4.2. 22.h.4.3.

56. If a rent be granted unto I. S. for life, the remainder in Fee unto him who shall first come at Pauls the next day in the morning, this remainder is good upon condition, viz. if I. S. doe not dye before the time, and also if one come to Pauls the next day in the morning, and if he who first come be not a monke or other person who is disabled to take by the grant. And so it shall be, if the remainder bee granted unto him who I. S. shall name within three dayes, &c. But if a rent be granted unto I. S. or I. D. this grant is void for the incertainty of the grant, for the deed is in the disiunctive, &c. and the delivering of the deed unto I. S. cannot make the grant to bee good unto him, for a rent cannot passe without deed, then delivery

30.Ass.pl. 47.

of

of the deed, cannot cause a deed that is void to take effect.

57. Now is to shew, What things may be granted or given without deed, and what not. And as to that, Know, That all chattells, reals, or personals, may be granted or given without deed. if not that it be in speciall cases. And therefore if a man give unto me his Horse or Cow, or a Bowe, or a Launce, or other such like thing, such gift is good by word: And if a man give unto me by word his corne growing upon the land it is good. And if a man give unto me a Tree growing upon his Land, it is good without deed. P.15.E.3. 41.

58. But if Tenant in taile give unto me a Tree growing upon the land, and dyes before that I have cut downe the tree, and his issue in the land where the tree is growing, if I cut downe the tree, he shall have an action of Trespasse, because that the Tree is annexed unto the freehold, and by the gift comes of the nature of the land: But otherwise it shall bee, If the donor of the Tree had beene sole Tenant of the land in Fee-simple in his owne right. 18.E.4.21 18.E.4.6

59. But if Tenant in taile give Corn growing upon the Land unto me, and dye before that I have severed the same from off the land, yet I may afterwards sever the corne and take it, for that the Executors of the tenant in tail should have had it. 10.E.4.2.

90. If

11.E.3. fr.59. 21.r.2.br. 937.

60. If Gardien in knights service be of the bodie and land, hee may grant the wardship of the Land without deed, because it may passe by livery of seisin. And as to the body, some are of opinion that it may be granted without deed, for they say it is but a chattell, and the executors of the Gardien shall have the body. But that seemes to bee but little reason: for if a rent charge bee granted unto a man for yeares, and he makes his executors and die, his executors shall have the rent, and yet it cannot passe without deed. But it seems that the wardship of the body shall not passe without deed for it doth not properly lie in liverie of seisin, no more than a villaine in grosse. And a man shall have a Writ of right of ward of the body, and in the writ of Non tenure is a good plea, as unto the body, and in the same writ voucher lyeth for the body, which prove that it is no personall thing, so that it seemeth it cannot bee granted without deed, tamen quære.

10.h.6.12.

10.E.3.1.

61. If a man seised of an acre of land lease the same unto a stranger for life, the remainder to I.S. in fee, this is good without deed, because that it passeth by livery of seisin. But the reversion of one acre of land cannot bee granted for life, in taile, or in fee, without deed. But the reversion of one acre of land may be granted for yeares without deed &c. But a rent common in grosse, advowson in grosse, and villeine in grosse, cannot

11 h 4.3. 8.h.6.33.

be

be granted for yeares, for life, in taile, or in fee, without deed, if not in speciall cases. So is it of Estones in grosse.

62. But an use may be sold without deed, and yet it shall descend to the heire of Cestuy the use, if it be an inheritance in him. the reason is, because the sale is but a contract, and a house or land may be sold without deed, &c. And if Cestuy give use of a reversion, wills that his executors shall sell the reversion and dyes, his executors may sell the reversion without deed. And a rent may be granted by one copercener unto another upon partition without deed. Quære if the Parson of a Church may grant the tyths of his parsonage for yeares rendring to him rent, without deed, some seeme that hee cannot, for they say, that notwithstanding that when tithes are severed they are but chattels personals; yet to the Parson of the Church they are as his freehold, &c. 7.E.4.14. 19.h.6.24 11.h.4.3.

63. If Lord and Tennant be of arable lands by Fealtie, and the service to render the tenth sheafe before the land shall be sowed, the lord cannot grant this service for yeares without deed, and yet when they are severed they are but personals: but the parson of the Church may take his tyths when they are severed from the tenth part. &c. But ỳ Lord cannot take such services when they are severed without the assent of the Tenant, &c. And ther is a writ de advocatione decimæ, &c. as appeareth by

by the Statute of Weſt. 2. Cap. 1. which beginneth, De advocationibus Eccleſiarum, &c. in the end, &c.

4.h.7.17. 64. A bodie politique, as a Maior and Comminaltie cannot make a leaſe for yeares of lands, whereof they are ſeiſed in the right of their corporation without deed; the ſame law is of a gift of chattels perſonals, mutatis mutandis, &c. But a leaſe for yeares made by an Abbot is good without deed during the time that he is Abbot, and a gift of chattels perſonals made by an Abbot is good for ever without deed. And alſo his ſucceſſor ſhall bee bounden by a recogniſance made by him: But otherwiſe it is of a deed inrolled, &c.

37.h.6.3.
9.h.6.25.
M. 14.E.1 Abbe.4.

65. Now is to ſhew of things to bee granted or charged: And as to that, know, that it is a common Learinge in the law, that a man cannot grant or charge that which he hath not: And therefore if a man grant a Rent charge out of the Mannour of Dale, and in truth he hath not any thing in the Mannour of Dale, and after hee purchaſe the Manno: of Dale, yet he ſhall hold it diſcharged. Alſo a man cannot charge a right, for it ſhall be a good plea for him to ſay againſt ſuch grant by matter in fait, that hee had not any thing in the land at the time of the grant: But in ſuch caſe, if the grant had bæne by fine executorie, the law is contrary.

14.h.4.31
9.h.6.25.
20.h.6.12.
31.Aſſ. p. 24

66. And therefore, if a man grant the reverſion of an acre of land where hæ

bee hath nothing in the land, by fine executory, and afterwards he purchaseth the reversion, now the grantee shall enter when the reversion doth fall, or shall have execution thereof by a Scire facias: But if two men joyn in a grant of a reversion by writing, and one of them hath nothing in the reversion, but the whole reversion is in the other, and the particular tennant attorne, it shall be only the grant of him that had the reversion; but if the grant had beene by fine it should have beene otherwise. 11.h.4.1.

67. If Lord and Tenant are of three acres of Land by Fealtie and twelve pence, and the Lord grant the services of a third acre unto a Stranger, it is a void grant, notwithstanding that it bee by fine. If husband and wife hold one acre of land jointly of I. S. for their lives and I. S. grant the Reversion of the acre of land with the husband sole holds of him for life, and he solie doth not hold any part of him, this grant is void. 7.E.4.25. 31.E.3. gr.93.

68. But if a man grant the Reversion, Omnium tenentium suorum; tam liberorum, quam Nativorum, qui tenent ad terminum vitæ vel annorum, by this grant all the reversions which bee hath shall passe with the attornment of the Tenants, aswell as if the Tennants had beene rented or named. And if Lord and three Joynttennants are, and the Lord grant the services of one of them unto a Stranger, this grant is void, notwithstanding 5.E.3.34. 7.E.4.25.

that

that the same Tenant attorne and subdive his companions, for attournment cannot make a bad grant good, but otherwise shall it be by way of release.

69. And therefore, if Lord and two joynt tenants are, and the Lord release all his right unto one of them, this is good and shall enure unto them both, for one of them only doth not hold of him, and it shall bee prejudiciall to no person that the services shall bee extinct by the release, but unto the Releasor himselfe. And allwayes a deed shall bee taken strong against him who made the deed. &c. If Lord and tenant bee of three acres of land, one white acre, and two other acres, the Lord grants unto the tenant by deed that he will not distraine in white acre for his rent and services. this grant shall not enure to such intent to determine the Seignorie in any part, but shall enure by way of covenant, so that if the Lord distraine in white acre for his services, the tenant shall have an action of covenant.

2. E. 2. Action for le fia.

70. If a man hold an acre of land of I. S. by fealtie and suit as of his manor of Dale, and I. S. is also seised of another Mannor called L. and I. S. grant unto the Tenant that hee shall doe his suit at his Mannour of L. this grant shall not determine the suit at the Mannor of Dale. And if I. S. in the same case had granted unto his Tenant, that he shall give unto him yearely twelvepence for his suite, this

this grant shall not determine nor alter the tenure. 7. E. 4. 25.

71. But if Lord and Tenant are of two acres &c. and the Lord release unto the tenant all the right which he hath in one acre of the same land, it is a determination of the whole Seignorie; And to this purpose there is a difference between a release in fact, and a release in law. For if the Lord had purchased one of the acres in fee which are holden of him that is no determination but of the rate of the services which are annuall and severable, and he shall have the whole corporall service. But if the annuall services be entire, as a Horse, a Hawke, &c. then all the annuall services are gone by the purchase but if one of the acres descend unto the Lord, then if the annuall service be entire, then shall he have the intire annuall service out of the remnant of the tenancy. But if it was severall as rent, &c. then it shall be apportioned according to the rate of the land. But if the Lord disseiseth his Tenant of part of the tenancy, the whole Seignorie is suspended. For a Seignorie shall not be suspended in parte and in esse, for other parcell to every intent simul & semel in one person, if not in speciall cases, but a seignorie may be determined in parte and in esse for other parte simul & semel. &c. 10. E. 4. exring. 4. Ass. p. 5. 40. E. 3. 40. 34. Ass. p. 15. 19. E. 4. 1.

72. If a man hath a rent charge of two shillings issuing out of black acre, and hath no more rent, and hee reciting

by his deed, where he hath a rent charge of two shillings issuing out of black acre and white acre, grant the same rent unto a stranger, this is a good grant to charge black acre with attornement of ꝑ tenant And if a man hath 2. shillings rent charg issuing out of blacke acre & white acre and reciting by his deed, whereas he hath two shillings rent charge issuing out of white acre, grant the same rent unto a stranger, this is a good grant with attornment, &c. for the whole rent is issuing out of every acre and out of every parcell thereof, &c.

73. If three coperceners be of a Seignorie in grosse, and one grant his part unto a stranger, this is a good grant with Attornement of the Tenant, &c. If Tenant for life be of three houses, and foure acres of lands, and hee in the reversion of two houses and two acres of land, and the Tenant attorne, this is a good grant, for such reversion the grantor had But in that case the thing granted is uncertaine. And as unto that, know, That of every thing uncertaine which is given or granted, election remaines to him to whose benefit the grant or gift was made to make the same certaine, if not that it be in speciall cases.

5.E.3.31.

5.E.4.39. 11.E.3. Annuity 27.

74. And therefore, If a man have five Horses in his stable, and he giveth unto me one of his horses in his stable, now I shall take which of the horses I will. And if a man grant unto me 10. shil. of rent charge

charge, or 40. shillings of rent charge, I may distraine for which of these rents I will but I shall not have both. So shall it be, If rent or common be granted, &c.

75. And if a Feoffment be made unto a man of two acres, scil. of one acre in tail, and of the other in fee, and doth not shew in certaine in which acre the feoffee shall have fee, nor in which acre he shall have an estate taile, and a precipe is brought against the feoffee of both acres, & he lose by default, and afterwards hee brings a writt of right of one acre, and that is put in view, and brings quod ei deforciat, of the other acre, and that is put in view &c. It is at the determination of the will of the feoffee, in which acre hee will have fee and, and in which acre he will have an estate in taile, &c.

76. If a man seised of two acres, lease them for terme of life, the remainder of one acre unto a feme sole, and doth not shew in certaine in which acre, and afterwards the woman takes husband, the tenant for terme of life dyeth, and the husband enter into one acre, and thereof doth enfeoffe a stranger by metts and bounds and dyeth, Now the wife shal not enter into the other acre, and chose that, For it was her folly to take such a husband who would doe such act when the remainder fell, forasmuch that the title to the remainder did begin by the grant which was before the marriage &c.

77. If a Man were enfeoffed of two a-

cres of one in fee, and of the other for life and doth not shew in which acre hee shall have fee, &c. and the Feoffee doth infeoffe a stranger of one of them by mets & bounds this is no forfeiture, causa patet.

78. If a man be enfeoffed of two acres of one in fee, and of the other in taile, and the Feoffee hath issue, and doth enfeoffe a stranger of an acre & dyeth his issue shall not have Formedon against ye Feoffee of this acre, for when his Father made a Feoffment of one acre, this feoffment was not of one acre severed from the other acre, so as one acre is as advantagious for the issue as the other acre for the Feoffee and hee shall occupie all in common and notwithstanding that the feoffment had bene made in severalitie that is to say, by mets and bounds of one acre, the issue shall be bounden there y, forasmuch as he cannot inherit, if his father accept not of the gift, and this feoffment shall not declare his will from the time of the gift.

79. And therefore if a man grant a rent charge in taile, and the Grantee bring a
35.h.6.3. writt of annuitie and recover, his issue shal not have a formedon of the rent granted, &c. If a yearely rent be granted issuing out of the Church of St. Peter, the Church of St. Peter and St. Paul is not charged by such Grant, for they cannot be intended one Church.

80. If two Joynttennants in Fee are of one acre of land, and Lease the same acre

acre unto a ſtranger for life, and the Leſſee granteth his eſtate unto one of his Leſſors, It ſeemes unto ſome men, that as unto one moitie it ſhall enure by way of ſurrender, and as unto the other moitie it ſhall enure by way of grant; and their reaſon is, becauſe ỹ the Grantee had but one moitie of the Reverſion of the Land in right, in ſo much as if hee had granted the whole Reverſion unto a ſtranger, and the Leſſee Attorne, yet but a moitie paſſeth from him, and by the like reaſon the Grant of the Leſſee ſhall enure by way of Surrender but of the moitie, & cetera. 5.E.3.19.

81. And if Tenant for life bee of one acre of Land, out of which acre a rent is iſſuing in fee, and the Tenant for life purchaſe the ſame rent by grant, this grant is good to take effect in the heires of the Tenant for life, and yet he had poſſeſſion in the whole Land at the time of the grant, &c. And if Lord and Tenant be, and the Lord grant his Seignorie unto the Tenant and to a ſtranger, this grant ſhall enure by way of extinguiſhment for one moitie, ſcil. to the Tenant, and for the other moitie, it ſhall enure by way of grant unto the ſtranger, &c. 35.h.6.42

82. And if Tenant for life grant his eſtate unto one of the Leſſors, It ſeemeth unto ſome, That this ſhall enure by way of ſurrender for the whole, & their reaſon is, becauſe ỹ every of ỹ leſſors is

seised of the whole, and of the whole reversion, and the grant of the estate of the particular tenant cannot take effect by way of grant without livezie of seisin, and the grantee cannot take livery of seisin of the same land because hee hath the reversion in fee of the whole land in him immediate to the same particular estate, and in his owne right. And therefore, if lesse for life grant his estate to him in ꝑ reversion in Fee in his owne right and immediate to the particular estate; this grant shall enure by way of surrender, &c. But if a woman who is sole seised of of one acre of land in fee, lease the same acre for life, and the woman taketh husband and the lessee granteth his estate unto the husband, that shall enure by way of grant, causa patet.

83. And if a men seised of an acre of land lease ꝑ same acre for life, ꝑ remainder for life unto a stranger, & ꝑ lessee grant his estate unto his lessor, ꝑ shal enure by way of grant, & yet the grantee is seised of the whole reversion at the time of the grant, but the same reversion is not to take effect immediately after the estate of the lease determined, if he in the remainder be living, as he is at the time of the grant, &c. And if lord and two joynt tenants are in fee, and the Lord grant his seignorie to one of the Tenants, this grant shall take effect by way of Extinguishment, for the whole &c. And to some it seemeth it shall enure by way of grant for the whole

whole, and they say, that otherwise the lessee shal not have libertie to depart with his estate to one of his lessors, &c

84. And therefore, If three ioynttennants are of one acre of land, and one of them releaſe all his right unto one of his companions, now he shall be in in the per, for the third part of which the releaſe is made &c. And it hath been holden, if the lessee for life grant his estate unto his lessor and a stranger, that by force of this grant they are ioynttennants. 11 33.h.8.

85. And if lessee for life die, and the reversion descend unto two coperceners, & one of them take husband and the lessee grant his estate unto the husband and wife, the same shall enure by way of grant for the whole, &c. And know, that a right shall not passe by way of grant if not by extinguiſhment, &c. And by releaſe it may be extinguiſhed. 21. E.4.2. 6.h.7.8.

86. And therefore, if the diſſeiſee of one acre of land grant his right unto a stranger, it is nothing worth; but if hee releaſe all his right unto the diſſeiſor, it is good, if it be by deed. And if he confirme the estate of the diſſeiſor the confirmation is good. And if Obligee and Obligor be, and the Obligee give the obligation unto a stranger, the gift availeth nothing as to bring an action in the name of the donee; for a thing in action cannot be given, but the Donee may cancell the Obligation, or give the same unto the obligor, &c.

87. If annuitie bee granted by the

Grantor and his heires unto a stranger and his heires, it seemeth to some
21.E.4.20 That the Grantee may grant it over, because it is an inheritance in him. Tamen quære. For the Grantee hath not any remedy for to have it but by way of action. Quære. If the annuitie had beene granted for terme of life. &c. If a
27.E.3.87 man seised of an acre of land lease the same Acre for life, the remainder unto the right heires of I. S. who is living, this remainder takes effect presently, but is in no person to grant, because it is in abeyance viz. in the consideration of the Law, &c.

17.Ass.p. 88. But if Tenant in tayle be of an acre of Land, the remainder of the same
60. acre unto his right heires, he may grant this Remainder, yet it is not executed in him, &c. If Lord and Tenant bee, and the Tenant Lease the Tenancie unto the Lord for life, The
P.5.E.3. Lord may grant his Seignorie unto a
16. stranger, and yet it is in suspence at this time. &c.

89. But if Lord and Tenant bee, and the Tenant infeoff the Lord of the Tenancie upon condition, the Lord may grant his Seignorie, and yet it is not determined nor extinguished, For if the condition be broken, and the Tenant enter, the Seignorie is revived: But if before the entry of the Tenant, the Lord enfeoffe a stranger of the Tenancy, and then the first Feoffee, that is to say,

the

Tenant enter, the Seignorie is not revived, but is determined, because that the Lord doth depart with the tenancy to his Feoffee discharged of the Seignorie. And so in the same Case the Lord may depart with his Seignorie by such meanes &c.

90. A Parson of a Church may grant his Tythes for yeares, and yet they are not in him for a time. But if Lord and Tenant be, The Lord cannot grant the wardship of the heire of the Tenant living the Tenant. But if a Man grant unto me all the wooll of his sheepe for seven yeares, the grant is good, &c. 38.E.3.6. 14.E.3.25 M.30.h.6

91. If Land bee leased unto mee for yeares, the terme to begin at the feast of Easter next ensuing, and before the Feast I grant my terme unto a stranger, it is a good grant. And if a Rent bee granted unto mee, and before I bee seised thereof, I grant the same Rent unto a stranger, the grant is good.

92. If hee that hath a Reversion depending upon an estate for life grant a rent charge issuing out of the same, the grant is good to charge the land after the death of the particular tenant, &c. If a man sell unto me goods, and I suffer them to be in his possession, and a stranger takes them out of his possession, and I grant or sell them unto the stranger, it is a good sale, or grant, &c. 37.h.6.18 36.Ass.p. 30. 33.Ass.p. 17.

93. But if a man take my goods out of my possession, and sell them unto me in open market, the sale is void, for it cannot be good, if not that the propertie bee thereby altered, and that cannot be. for before the sale, and at the time of the sale, the propertie was in mee, and then if it shall be altered by the sale, it ought to be altered in me, and that shall be impertinent for then it should bee altered out of me immediately in me, &c.

M. 5. E. 4 61. 94. If a villaine be granted for life, the grant is good; And in the same case if the villaine purchase lands in fee, and the grantee for life enter into them as into lands purchased by his villaine he shall keepe the lands unto him and his heires and yet hee hath not estate in the villaine but for life, but the reason is, because that he hath the same as a perquisite, &c. And to that purpose there is a difference when a man shall have one thing in respect of another thing, and when in the place of another thing and when by reason of another thing.

95. And therefore, if a man lease lands for life, and the lessee do waste, and the lessor grant the reversion unto a stranger and the lessee attorne, the Grantee shall not have an action of waste, for this waste, because it was not to his disheritier since, and, the Grantor shall not have an action of waste, because the reversion was out of him &c. And if Lord and Tenant be and the Tenant alien in Mortmain, and the Lord

Lord grant his Seignorie unto a stranger, and the Tenant attorne, now the grantor shall not enter for Mortmaine, notwithstanding that it bee within the yeare after the alienation, because that the Seignorie in respect of which he is to enter is out of him.

96. If Lord and tenant be. And the Lord grant his Seignorie for life unto a stranger, & the tennant attorne, and die without heire, and the grantee enters for escheate, hee shall not have a greater estate in the Tenancy than hee had in the Seignorie, because the Tennancy commeth in lieu of the Seignorie; And so shall it be of lands recovered in value by voucher to his purpose, mutatis mutandis, &c. P.5.E.4. 3.

97. If a man seised of a Manour unto which an Advowson is appendant in fee, lease the same Mannour unto a stranger for yeares, or for the life of an other man, and the Church become void during the terme, and the yeares expire or he for whose life it was dies before the six moneths passe, and before the lesse hath presented; yet the lesser shall have the presentment because he is to have the same as a perquisite by reason of the Manor. And if feoffee of one acre of land upon condition bee, and the feoffer enter and doe trespasse and afterwards the condition is broken, and the Feoffer enter yet the feoffer shall have an action of trespasse against the Feoffer, notwithstanding 4.h.7. 11.

ing that he hath not the land wherein the Trespasse was done. Causa patet. &c.

98. If Cestyque use be of a Reuersion, he may grant the same as well as if he were in possession. and that by the statute of Richard the third. made in the first peare of his raigne. Chapter 1. And by the same statute, Cestyque use of Lands or Tenements may charge them by his grant: vide the Statute. And a man may grant common, or rent, notwithstanding that a stranger takes the rent, or useth the common, for he shal not be out of possession of them, but at his pleasure, &c.

99. And know, That all such things which are granted unto a man by reason of trust touching the person of the Grantor he cannot grant them over, if not in speciall cases, unlesse in case that it bee granted to him and his assignes. 11.E.4.1.

100. And also, If it be an office of trust concerning the person of the grantor, hee cannot use the same by deputy, if not in speciall cases, unles in case that the grant be so made. An assignee is always such a person who doth occupie in his own right, and a deputie such a person who doth occupie in the right of another.

101. If a man grant unto me to be his Carver, or Sewer, or Chamberlain, &c. I cannot grant the same over or use them by deputie. If the grant be not so made as before is said. And so is it of other the like Offices, &c. Also the Lord Chancellor of England, Justices of 10.E.4.14

the

the Kings Bench, Justices of the Common Pleas, and Barons of the Exchequer cannot grant their Offices over unto other persons; or use them by Deputie, &c. And if annuity be granted unto me, pro concilio in posterum impendendo, I cannot grant it over, if it bee not granted to mee and my assignes. And Quære, whether I may then grant it. 21. E 4. 83.

102. If a man by grant have common of pasture for cattell without number, and his Grantor grant common of pasture for cattell without number in the same lands to another man, the second grant is not good against the first Grantee, because a man by his grant shall not prejudice him who hath an elder title, but the same grant is good against the Grantor himselfe. 18.h.6.3c

103. If two Joyntenants be of a Carne of Land, and one of them grant common of pasture for cattell without number to bee taken in the same land to a stranger, the grant is void against the other Joyntennant as before is said. But it is a good grant against the Grantor himselfe. And Grantee for life of common of pasture for cattell without number, or of a corodie uncertaine, cannot grant the same over, if the grant be not to him and his assignes. But Grantee of common of pasture for cattell certain, or of a corody certain, or of an advowson, or of a villain, or rent, or the like, may grant the same over, notwithstanding the grant bee not 44.E.3.13 33.Ass.p. 3.

to

to him and his assignes, unlesse there be a speciall proviso in the grant, that hee ought not so to doe, &c.

104. Common of pasture appendant cannot by grant or otherwise be severed from the land to which it is appendant, if it be in esse. So is it of Estovers granted to be burnt in a house certaine mutatis mutandis: But a villaine regardant unto a Mannour, and Advowson appendant to a Manno; may bee severed from the Manno; unto which they are appendant and made in grosse by grant &c. And it is a common rule in law, that if no estate be expressed in the grant, the grantee shall have an estate for life. But yet if there be such words in the grant which may declare the will of the grantor, and his will is not contrary to the law. the estate shall be according to his intent and will, if not in speciall cases.

5.h.7.1.7 Gr.38. P.26.h.8. 4.

105. And therefore if two markes of annuall rent be granted unto a man until ten markes are levyed the grantee shall not have an estate in this rent but for five yeares, for the intent of the grantor cannot be otherwise, and the words in the grant are sufficient to satisfie the same intent, &c. And if a man seised of a rent issuing out of land which is devisable, devise the same rent unto a stranger untill his heire, viz. the heire of the grantor be of full age. and the grantor dye his heire being of the age of sixteene yeares, the Devisee hath an estate in

the

the rent but for five yeares &c. tamen quære.

106. If a man seised of a Carue of land in fee, grant ten shillings rent issuing out of the same land unto an Abbot, and a secular man, it shall enure as severall grants, and either of the grantees shall have ten shillings because that the grant shall be taken strong against him that made it, and for the benefit of the grantee, tamen quære The same law is, mutatis mutandis. If two tennants in common of a Carue of land ioyne in a grant of a rent charge of ten shillings issuing out of the same land unto another man, &c.

107. But if two Tenants in common of a carue of land, lease the same carue unto a stranger for life, reserving to them ten shillings. This shall take effect as severall leases, and either of them shall not have but five shillings. For the Reservation is their owne act, and they shall not have more then they themselves have reserved, &c.

108. If a man grant unto me common of pasture for ten kine in his lands in such a Towne; yet I shall not have common, but in his land commonable in the same Towne, and yet the Grant is generall. in his lands in the same towne: But the reason is, because he doth not grant but only common of pasture, and for cattell certaine and commonable; so as the grant shall not extend but unto pasture

Lands.

lands. But if common of pasture be granted unto me for all manner of cattell, I shall not have common for Hogs, &c. Also if common of pasture be granted unto me for my cattell. I shall not common but with cattell commonable, for a Grant shall have a reasonable construction, &c.

9 h. 6. 36. com. 12.

109. If a man grant unto me common of pasture for my cattell whensoever his cattell shall goe, and be occupie and manure an hundred Acres of land with his cattell, and afterwards he hath no cattel. Yet I shall have common in the hundred acres, &c. But if common of pasture be granted unto me for my cattell whensoever the cattell of the Grantor shall goe, &c. in this case the Grantee shall not have common but when the Grantor stock common with his cattell. &c.

110. If a man hath a fishpond, and he grant and sell unto a Stranger all the fish in his pond, the Grantee cannot dig the land to make a trench, because hee may take the fish with nets and other engins, so that alwayes a grant shall have a reasonable construction. But if a man have a Wood, and hee grant all the Oakes growing in his wood to a Stranger, the Grantee may cut downe the Oakes, and come upon the Land of the Grantor with Carts to carry them, for otherwise hee cannot conveniently have them, &c.

b. E. 1. fo. 41.

111. If a man give me leave to make a trench

Trench for such a spring in his lands unto my Manor, so that I may lay a Pipe in the land to convey the water to my Manour in a Conduct. If afterwards my pipe be broken, I may dig his land to amend the Pipe. &c. 9.E.4.35.

112. Now is to shew, What things shall passe by the grant of other things. And as unto that, know, That all things which are incident unto others shall passe by grant of those things to which they are incident, if not that it be in speciall cases. And therefore if Lord and Tennant be by homage and fealtie, and the Lord grant the homage unto a stranger, and the tenant attorne by this grant, the Fealtie shall passe as incident to the homage, &c. 29.Ass.p. 20.

113. And if Lord and tenant be by fealtie and rent, and the Lord grant the rent unto a stranger, and the Tenant attourne, by this grant the Fealtie shall passe as incident to the rent: But in the same case, If the Lord grant the rent (saving to himselfe the fealtie) the grantee shall have the rent as a rent seck, and the Fealtie doth not passe &c. If a man seised of one acre of land, lease the same acre unto a stranger, reserving rent, and grant the reversion of the same acre unto another stranger, and the lessee attorne, by the grant of this Reversion, the rent shall passe as incident to the reversion: but in the same case; If the grantor of the reversion in his grant, save unto him- 44.E.3. Hor. de son. tit. 20.

seise the rent; the rent shall not passe, &c.

114. If a man have a reversion in fee in ten shillings of rent issuing out of lands in Dale, and also hath the Reversion in fee of an acre of Land in the same towne, and he grant all his lands and tenements in Dale unto a stranger, by this grant the Reversions shall passe: But if the Grantor had an annuitie in the same towne it shall not passe by such grant, &c. If a man hath a reversion in a Mill, and he grants totum molendinum suum, unto a stranger, by this grant the reversion of the mill shall passe, &c. But in the cases of grants of Reversions, there ought first to be attornments, otherwise they shall not passe, if the grant bee not by matter of Record &c.

24.h.6.6. T.16.E.3 Gr.55. M.38. E.3.36. 30.E.1. Iuin.Cor. Gr.1.9.

115. If a man give and grant unto me omnia bona & catalla sua, his Charters concerning his lands shall not passe, by these words, &c. If Lord and Tenant be by Homage, Fealtie, and Rent, and a rangr bring a Præcipe quod reddat, of the Rent against the Lord, and recover by this recoverie the Homage is not recovered, but the Fealtie is, &c.

116. If a man seised of a Manor unto which an Advowson is appendant: entereth a stranger of the Manor without saying any thing of the advowson, and without saying cum Pertinenciis, the Advowson doth passe, &c. And by such feoffment the services of the tenants which held of the Manour shall passe with attournment of the

Breif.581 Fesm.53

the tenants, for in such cases the services are parcell of the manour. &c. And by Grant of Lands and tenements advowson shall passe, &c. And if land be knowne by the name of the house, then the reversion of the same land may passe by the name of the house, &c. And if fix acres are knowne by the name of a Manour, then the reversion of them shall passe by the name of the Manor, &c. The same law is e converso in these two last cases. Mutatis mutandis, &c. By this word (Bois) great Wood and under wood shall passe, &c. If I be seised of a manour, and a stranger grant all manner of Estovers unto me, to my Manor. &c. by this grant I shall have Housbote, Plowbote, and Haybote, &c.

DEEDES.

CHAP. II.

117.

Because I have shewed in the Chapter of Grants, that there bee diverse things which cannot be granted without deed, I will now therefore shew some things which are necessary concerning deeds. And as to that know, That there are three things necessarily appertaining unto a Deed; viz. writting, sealing, and deliverie; First, some thing shall be said concerning them and afterwards shall be said other things concerning deeds. &c.

118. Notwithstanding, That some Kings and Princes have used to make blanck Pattents and Charters sealed to be delivered to diverse men to write what matter soever they would in them, and that such Pattent have borne sufficient warrant

warrant to the Pattentees, &c. Yet if a common person seale an obligation or any other deed without any writing in it, and deliver the same unto a stranger; man or woman, it is nothing worth notwithstanding that the stranger make it to be written that he who sealed and delivered the same unto him, is bounden unto him in 20 l. For in an action of Debt brought upon this Obligation, hee may plead that it is not his deed, Causa patet. The same law is of other Deeds, mutatis mutandis.

119. And forasmuch as it is commonly used to write a deed before it be sealed, and after the writing to seale it, and after the sealing to deliver the deed unto the partie. Therefore first some thing shall be said of the writing of it. And forasmuch as it appeareth in the Chapter of Grants, there ought to bee Grantor, Grantee, and a thing granted. So in the same manner in every obligation, there ought to be Obligor, Obligee; and a thing in which the Obligor is bounden, &c. And so shall it bee of a Feoffment, and other deeds, Mutatis mutandis, &c. And therefore shall bee said of other collaterall things not put into the deed, and when the Deed shall be suspitious for the manner of writting of it. 7. E. 3. 56.

120. And as to that, know. That if a deed have not any date, yet the deed is sufficient enough. And when the partie takes advantage of such a deed, he shall

adde the day and place of the deliverie of it. But it is said, If the deed be dated at
3.h.4.4. 36.h.6. London in the Countie of Yorke, and in
faits 4. truth there is not any such place within
22, 4. 23. the same Countie, that this is a void deed. For the partie who useth the deed from the place dated within the same deed. And if a Deed bare date before time of memory, it is not pleadable, if it bee not upon Record. But the partie may well give such a Deed in evidence.

121 If a man bring an action of debt
2 E.3, ob. lig. in the Common pleas, upon an obligation bearing date at Warwick, the plaintiffe shall take nothing by his writ, because he cannot varie from the place dated in the obligation, and the Common pleas hath not Jurisdiction there. But when a Deed is pleaded bearing date at such a place where the Court hath not Jurisdiction, if the Deed be not answerable, the plea is good enough.

122. And therefore if in a Replevin the defendant avow for a Rent charg in another place, then the plaintiffe counts) to him granted by Deed bearing date where the court hath no Jurisdiction, and the plaintiffe maintaine his declaration (as he ought) which is found against the
7.E.3,17. plaintiffe; the defendant shall retorne of the cattell. And notwithstanding that a Deed hath all his words, if it be raced or interlined in any suspicious place within the deed, or new letters written upon the

the old Letters, the deed is greatly suspicious, if not that it bee in speciall cases. M.14.E.3 35. M.45.E.3 18.

123. And therefore if the name of the Grantor or Grantee bee raced or interlined in a deed Poll, the deed is very suspitious; So is it of the thing granted, or in Limiting of the estate. &c. If the Date of a Release be raced in the place, it is very suspicions, because it may may bee it was Dated out of the Realme. But if the lines of a deed be written crooked, the Deed is not suspitious for this matter. 44.E.3. 41.J

124. And notwithstanding, That a Deed Poll bee raced in a place which is not materiall, the deed is not suspicious for such matter; As if a deed of Feoffment bee raced in the addition of the name of the Feoffee, Or if the deed comprehend Dedi & concessi, and concessi is raced, the deed is not suspicious for such matter. But otherwise is it, if Dedi be raced, for this word Dedi comprehends the effect and force of this word Concessi and more. For Dedi in a deed of Feoffment comprehends in it a warranty against the Feoffer, and so doth not the word concessi. And although that a deed Poll be raced in a materiall place, as in the name of Baptisme of the Grantor or Grantee, if it appeare that there was no writing there before it is not greatly suspicious. H.14.h.4. 18. 31.E.1. feof. 118.

125. And

125. And if a man grant unto me a rent charge by Deed which he hath issuing out of the land of another man, and the Tenant attorne, and the Grantee by his Deed reciting the same grant, regrant the same to his grantor, and the later Deed is raced in the name of Baptisme of the grantor, yet it is not greatly suspitious, because it doth rely upon another Deed, in which relyer, viz. recitall, it is not raced. Quere, if such a Deed be raced in the date of the place, &c.

126. And notwithstanding that this word (Executor) be raced in the will, yet the will is good enough, because it relies upon the Register of the Ordinary before whom it was proved, and that it appeareth whether they were made executors or not; And if in debt brought upon an obligation, the date of the obligation be raced, and the plaintiff shew forth an indenture of defeasance proving the obligation, the Obligation is good enough. So is it of Indentures Bipertite, Tripertite, or Quadripertite, if one of them, or all of them, be enterlined or raced in a materiall place, they are sufficient notwithstanding the same, if so bee that they doe not varie in the words.

P.25.E.3 41.
22.h.6.52 Execu.17
M 41 E.3 29.

127. But if one indenture be raced in a place materiall, and the other indentures or indenture are not raced, and the Indenture which is raced doth not agree in words in that place which is raced with them or that which is not raced, the In-

Indentures raced is greatly suspicious.

128. As put the case. The indentures are of bargaine and sale of lands or tenements; and the indenture which remaineth with the vendee is raced, and the word which is raced is manour, and in the other Indenture the word which is raced is house. And the vendor hath a Manour and also a House in the same Towne where the lands sold doe lye, the indenture with the vendee hath is greatly suspicious, And so is it of interlining, and of other the like things, and if the words which testifie, That the Cyantor, Feoffer or Obligor, &c. have put their seale unto the deed, the deed is insufficient, notwithstanding that it be sealed. And if it appeare that a deed hath by me hung in the smoake, it is suspicious. H 40.E.3

129. And it is to be knowne, that notwithstanding, That words Obligatorie, or &c. are written in parchment or paper, and Obligor or &c. deliver the same as his deed, and it is not sealed at the time of the deliverie, it is but escrowle, notwithstanding that the name of the Obligor be subscribed, and notwithstanding that yet by the custome in ancient Cities and Boroughs in an action of Debt a man shall not wage his law against the Merchant's booke, and yet it is not answerable by the common Law, notwithstanding that it bee Sealed with the Seale of the partie, and delivered by him.

130. So

130. So know, that a writing cannot be said a deed, if it be not sealed, &c. But it is nothing to the charge, whether it be sealed with the seale of the Grantor or not, or by a stranger, or by the grantor if the grantor deliver the same writing, &c. as his deed.

131. And therefore if John at Style write an Obligation in the name of Richard at Gappe unto T. D. and N. N. and seale the same obligation with the seale of R. Rm, and Richard at Gappe take the same Obligation so written and sealed, and delivers the same unto T. D. as his Deed. Now this is a good Obligation against Richard at Gappe. Causa patet. And so it is of all other Deeds &c.

132. If Abbot and Covent seal a writing with the seale of a Lay man, And it is said in the deed. In cujus rei testimonium appensum est nostrum Sigillū commune, and the same writing is delivered according to the form of law, it is a sufficient deed, and shall bind the Abbot and Covent for this seale shall bee said the Covent or common Seale for the time, for with their common assent they may change their common seale, at what time they will

133. And if Abbot and Covent cause 11.E.4. 4
to be made a writing, in which it is said Sigillum nostrum apposui mus, and not Sigillum nostrum commune, yet the writing is sufficient and shall bind the Abbot and Covent. But if Abbot or Prior

seale

seale a writing made in his name and in the name of the Covent without the assent of the Covent, and it is said in the deed, Sigillum nostrum commune apposuimus, the same is delivered by the Abbot or Prior, without the assent or agreement of the Covent, this is only the deed of the abbot or Prior, and not of the Covent, causa patet,. And so is it of Deane and Chapter, Maior and comminaltie, and such like other, mutatis mutandis, &c.

T. 21. h. 6 4.

M. 37. h. 6 3.

134. And notwithstanding that it bee necessarie that a deed be sealed, yet it is not requisite, that there be for every grantor &c. who is named in the deed, a severall piece of war, for one piece of war may serve for all the Grantors &c. which are named within the deed, if every one of them put his seale upon the same piece of war, or if another doe so for them, &c. if the words in the deed imply so much, viz. it be said in the deed, In cujus rei, testimonium sigilla nostra apposuimus, or words to the same effect.

P. 8. h. 6. 8

27. h. 6. sefm. 105

135. And it is to be understood, that notwithstanding, that a deed be once sufficiently sealed, and the print of the seale is all bruised so as it doth not appeare that it was sealed; the deed is insufficient. But if there appeare any print of the seale upon it, and the seale remaine annexed unto the Deed, it is sufficient. But if the Seale bee severed from the Deed, notwithstanding that a print remaines the deed is insufficient. And if it appeare

M. 37. h. 6 18.

appeare that the seale was once severed from the deed after it was delivered as a deed, notwithstanding that the Seale be fixed againe unto the deed, the deed is insufficient.

136. And it is said, If the Seale of a deed be a little bruised, if it be an ancient or a new writing, and part of the Seale remaine upon which there is any print, the deed is good enough. But if this part which remaines to the deed hath not any print, then the deed is insufficient: But if it appeareth that the piece which remaineth annexed to the deed which had any Print, were once severed from the deed, and softned by the fire and so fixed againe to the libell of the deed; the deed is insufficient.

137. And notwithstanding that a deed be sufficiently written in my name, and sealed by me, and is not delivered by me or by another by my assent, or by my agreement or commandement the same shall not bind me for all this, while it is but an escrowle. And if I make such Escrowle, and let it lie by me, and a stranger gets it, it shall not bind me, for it is not yet my deed.

C.R. 2. M. defts. 159.

138. And if I make a deed and deliver the same unto a stranger as an escrowle, to keepe untill such a day &c. upon condition, that if before that day hee to whom the Escrowle is made shall pay to me ten pound or shall give me a horse, or enfeoff me of the Manour of Dale, or shall perform

M. 9. h 6. 37.

form any other condition, that then hee shall deliver this escrowle unto him as my deed, in this case, if hee deliver the same unto him as my deed before the conditions or condition performed, it is not my deed simpliciter. But if the conditions or condition be performed and the escrowle delivered by him after the conditions performed as my deed, then it is my deed and shall bind me, and at the time of this deliverie, then begins it to be my deed, and shall not have relation unto the first deliverie. But Quære, if it shall have relation unto the time of the condition or conditions performed. But it seemeth not. 10.h.6.25 41.E.3. 29.

139. But if an infant make an Obligation or other writing to be written, and seale it, and deliver the same unto a stranger as an escrowle to deliver unto him to whom it is made, when the Infant shall come to his full age, as his deed in this case if the stranger deliver the same at the full age of the infant, it is yet void, for he hath not authoritie to deliver it, if not by commandement, and that was void.

140. But if a sole woman deliver such Escrowle upon a certaine condition, &c. and before the performance shall take husband, yet if the conditions are afterwards performed and the escrowle delivered as the deed of the woman, she shall be bounden thereby. And some men think she shall not be bounden thereby, for they say

say that by the deliverie of the Escrowle by the stranger as the deed of the woman, then it began first to take effect as her deed, and shall not have relation unto the time of the first deliverie made by the woman when shee was sole: insomuch, that if the partie to whom the Obligation is made before the conditions performed, and before the last deliverie by the stranger as the deed of the woman, release all actions and demands unto the woman, and afterwards the Baily deliver the Obligation to whom it was made as the Deed of the woman, because that the Conditions are performed. The Obligee notwithstanding this Release, shall have an action of Debt, upon this obligation, which proves that the last deliverie shall not have relation unto the first deliverie, and at the time of the last deliverie, and at the time of the conditions performed the woman had a husband. And all obligations made by a married woman, &c. are void against her, and also it seemeth unto them that this marrying the Husband is a countermand in Law &c.

141. But notwithstanding these reasons. It seemeth that shee shall be bounden by the obligation, For at the time of the first bayement shee was sole, so that all things done at that time were good and Lawfull, &c. And it is not like unto the case, where an infant delivereth

bereth a writting upon such a condition, Causa patet, &c. And if a sole woman covenant with mee by Indenture to pay unto me ten pound at the Feast of Easter, which shall bee in the yeare of our Lord 1640. and before that day shee take husband, and the Coverture continues betweene them until the day on which the covenant should bee performed be past, shee shall not therefore bee discharged of the Covenant, because the marriage could not be celebrated without her assent. And hee who is bounden to doe a thing, or to suffer a thing to bee done, cannot discharge himselfe thereof by his owne act only, if not in speciall cases and so &c. And the woman when shee was sole could not countermand the Baylement as this case is, because that the obligee is as it were partie and privie to the bailement of the obligation, in as much as he is to doe and performe certaine conditions which are annexed unto the bailement, and also is to take advantage by the performance of them, &c. Tamen quære, forasmuch as the obligee was not partie to the bailement, but the same was made by the woman onely: But the Law had beene cleare with the obligee, if the bailement, &c. had beene made by the woman, and the obligee joyntly. See the same Case in the Chapter of Grants, &c.

142. And

9.h.6.37. 142. And it is to be knowne, That if a man command a Scrivenor or other man to write a deed, viz. an obligation, or other deed in my name, to T. Downe, and he doth so. And after I seale the obligation, and command the Scrivenor to keepe it untill certaine indentures betweene mee and the said Tho. Downe containing certaine conditions be sealed and delivered, And before it is so done, the said Tho. Downe takes the said Obligation out of the possession of the Scrivenor, this obligation shall not bind the Obligor.

143. But if I deliver an Obligation or other writing unto a man as my deed, to deliver unto him to whom it is made when he shall come to Yorke it is my deed presently, and if he deliver it to him before he come to Yorke, yet I shall not avoid it, And if I die before hee come to Yorke, and afterwards he commeth to Yorke, and hee delivereth the deed unto him, it is cleerely good, and my deed, and that it cannot be, if it were not my deed before my death.

144. And if I deliver a writing unto a stranger as my deed, to deliver unto him 10.h.6.25 to whom it is made upon condition, and M.13.h.4 8. he to whom it is made, gets it out of the possession of the baily before the conditions performed. Yet it is my deed and shall bind mee.

145. And if the next Avoidance of the Advowson of the Church of Dale, &c

by

be granted unto a man by deed bearing date the first day of May, in the fifth year of King Henry the seventh, and the same deed is first delivered as a deed to the partie the fourth day of May, the same yeare. And by another deed bearing date the second day of May in the same yeare, the next avoidance of the same Church of Dale, &c. is granted by the same grantor unto another man, and the same deed is delivered as the deed of the Grantor, the third day of May in the same yeare, in this case the last Grantee shall have the next Avoydance of the same Church, and not the first Grantee, and yet his deed did beare date before the deed of the second Grantee: but it is because a deed first takes effect by his deliverie, &c.

146. And in an Action brought by a sole woman upon an Obligation, if the Release of one who was her husband bee pleaded, &c. the woman may say that at the time of the deliverie of the Release, he was not her husband, &c. And the Jury shall be charged to enquire of the time of the deliverie, and not of the date, notwithstanding that the woman in her pleadeth not make protestation of the date, &c. And it is to bee knowne that he who pleades a deed, and hee against whom a deed is pleaded may varie from the date of the deed in the time of the deliverie. And it is said, That then it behooveth that the date be before the deliverie of the deed.

15.E.3. festy.93.

M.13.E.3 Ass.pl. 116.

29.Ass.p. 47. 147. And therefore, If a Man bee bound in a Recognizance, and the Recognisee grant unto the Recognisor by his deed indented, bearing date before the recognisance, That if the Recognisor performe certaine conditions contained in the same Indentures, that then the Recognisance shall bee of no force, In this case it behooveth the Recognisor to take advantage of this deed by averring of the deliverie of the same deed after the Recognisance entred into.

148. If a man bring an Action of debt against me upon an Obligation bearing date the second day of May, and declares accordingly &c. And I plead against him a Quittance bearing date the first day of May in the same yeare; I shall take advantage of this Acquittance by averment: to say, That it was first delivered as the deed of the partie after the date of the obligation, viz. at such a day, &c.

149. And in Replevin brought by a sole woman, the defendant avowes by reason of a Grant of a rent charge made unto him by the woman, which grant beareth date the first day of May; The woman may avoid this deed, saying that it was first delivered the tenth day of M.12.h6.1 May in an other yeare after; at which time she had a husband, &c. And it is to be knowne, that a man cannot plead the deliverie of a deed before the date of it. For every deed which hath a date shall be

be intended to be written, the day of the Date. But it is no Deed before the delivery, and a Deed cannot be Delivered to take effect as a Deed before it bee written.

150. And therefore in an Action of debt brought against Executors, who plead a Release of the Plaintiffe made unto their Testator, the Release beareth date after the purchase of the writ, now if the Executors will say that it was first delivered in the life of the Testator, the plea is insufficient. Causa patet. And if the date of the probate of a will be more ancient, then the date of the making of the same will, the will is void as to bring an action upon it, &c. And it is to bee knowne that if a man plead a release, or other deed, bearing date at such a place, viz. at Dale, in the Countie of Middlesex &c. he shall not be suffered to say, that it was delivered at another place, then where it beareth date. T. 18. E. 2 fol. 190. H. 22. h. 6. 13.

151. And therefore if an action of Debt be brought by administrators; and they declare, that the administration was committed unto them in London, and the letters of administration beare date in another place, and in another Countie then they have declared, the declaration shall abate; and so know, That he who pleads a Deed shall not varie from the place where it beares date: But he against whom a deed is pleaded may say, That it was made by duresse of Impri- 36. h. 6. 31

sonment at another place, and in another Countie than it beareth date.

H.8.E.3. 3. 152. And therefore, If in Quare ejecit infra terminum, or Terminum qui præterit, or in formedon &c. the Tenant plead the release of the demandant, bearing date at Dale, &c. and the Demandant say that he was taken by the Tenant at Dale in another Countie, and there was imprisoned by him, untill hee made the deede unto him, this is a good plea; and Vsine. 7. the matter shall bee tryed where the imprisonment is alledged &c. And so a man may varie from the place which is compriſed in the deed, because when a man maketh a deed by imprisonment, hee to whom the deed is made may put in the deed what date he will.

153. And it is to be knowne, That an obligation or other deed may be made by 7.E.4.40. Abbot and Covent, out of their Monasterie, for all the Monkes may be in another place, So that if the deed say, Datum apud London, without speaking de domo capitulari, such a deed is good enough, although that their Monasterie were at Kingstone, &c. But if their deed say Datum in domo Capitulari, this cannot bee but where the Chapter is. &c.

154 And it is to be known, that a Deed cannot have and take effect at every deliverie, as a deed. For if the first deliverie take any effect, the second delivery is void; as in case an Infant or a man in prison make a deed and deliver the same

same as his deed, &c. And afterwards the infant when hee commeth to his full age, or the man imprisoned when he is at large deliver againe the same Deed as his deed, which he delivered before as his deed, this second deliverie is void. But if a married woman deliver a Bond unto me or other writing as her deed. this deliverie is meerely void, and therefore if after the death of her husband she being sole, deliver the same deed againe unto me as her deed, the second deliverie is good and effectuall. M. 1 h. 6. 4. H. 8. h. 6. 8.

155. Notwithstanding, that a deed bee sufficiently written viz. without rasure, interlyning or new writting upon the old writting, or without any other like fault, and also be sufficiently sealed and delivered as the deed of the partie; yet if the words in the Deed in themselves are not sufficient in Law to binde the partie, the deed will availe little or nothing against him.

156. And therefore, if the disseisor enfeoffe a stranger by deed, and the words in the deed are such, viz. Know all men &c. Quod ego, the disseisor (and name him) per assensum & consensum, of the disseisee (and name him) Dedi & concessi & hoc presenti, &c. unto the stranger &c. and that be done before any entrie made by the disseisee, these words per assensum et consensum,) of the disseisee shall not bind him, but that hee may enter, notwithstanding that it be true, that the Feoff-

ment was made with his assent and consent, for when he is disseised he hath but a right which shall not depart from him if not by extinguishment, and it ought to be at least by deed, and made unto him who at the least hath the possession of the Freehold in the same Land at the time &c. And in this Case the Feoffee had not any possession at the time of the Feoffment, and the disseisor cannot enter in the name of the disseisee, and revest the possession in the person of the disseisee, for the disseisor himselfe is in possession, and he cannot enter upon himselfe, &c. So it cannot bee that the disseisor doth make this feoffment as servant unto the disseisee, for it is made in the name of the disseisor &c.

157. But if the disseisee had entred and then the disseisor, and the disseisee had joyned in a feoffment by deed, with words of confirmation. Then it shall be said, the Feoffment of the disseisee, and the confirmation of the disseisor. But if they have joyned in such a feoffment by deed, before entrie of the disseisee. And the disseisor had made liverie of seisin now it shall be said, the feoffment of the disseisor, and the confirmation of the disseisee; and if a stranger had entred in the name of the disseisee, and by his commandement had made a feoffment in the name of the disseisee, et per assensum et consensum, of the disseisee by a deed containing in it a warrant of attourney to make liverie of seisin.

sin, By such feoffment the disseisee shall be bounden. 40.E.3.

158. And it hath beene holden that a man shall be bounden by the speaking of another man, by averment thereof in putting his seale to it, and delivering of it as his deed. As if a man be obligee in debt, or Covenant by writing, Et ad majorem hujusmodi rei securitatem, inveni A. de B. et C. de P. fidejussores quorum unusquisque, in toto et in solido se obligavit, And notwithstanding that none speakes the same but their principall; yet if the other puts their seales to it and deliver the same writing as their deed; then they allow of that which the principall speaketh, and so they themselvs are become principals, and so it hath beene holden, tamen quære. Cov. 16. T.4. E.1. Obli. 16.

159. And it is to be knowne, That at this day, a man shall be bounden by putting of his Seale unto a Deed indented, and deliverie of the same, and yet the words within the deed are spoken only by another man. And therefore if a man make a lease unto me of my owne land by deed indented for yeares, without saying any more, by this deed I shall be concluded, and yet there is no speech of mine in the deed. And if father and son bee, and the Father is seised of one acre of land in fee, and a stranger lease the same acre unto the Father by deed indented for years, and the Father dyeth. Now the Lessee by this deed shall conclude the heire of the 14.h.6.22 P.43 E.3 17.

Lessée to say, that his Father died seased in his demeasne as of Fee, and yet there is not any speaking in the deed by the Father &c.

160. And it is said by some men, that if in a deed indented made between two, both speake by words within the deed, but the words which one speaketh be in the first person, and the words which the other speaketh are in the third person. In this case they say, that all the words in the deed, shall be said to be spoken by him who spake in the first person, which saying is nothing to the purpose.

161. Now is to shew, where the words Contingat, or Proviso, or such like words in a deed, shall be void, where not. And to that purpose it is to be knowne, That when the Habendum or Contingat, &c. is not repugnant unto the premisses of the deed, but may well stand, Then the Habendum, or &c. shall be good and effectuall, if not that it be in speciall cases. But if the Habendum &c. cannot stand with the premisses, but is repugnant to their premisses, Then the Habendum, &c. shall be of none effect, but all the deed shall take effect upon the premisses, if not in speciall cases. 21. 14. h. 8

162. And therefore if a man enfeoffe another by deed, and in the premisses of the deed, give the land unto the feoffee and his heires, Habendum et tenendum unto the feoffee and his heires for terme of yeares, or for another mans life, this ha-

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bendum is void, and the Deed shall take effect upon the premisses notwithstanding the liverie of seisin bee made according to that whole deed: The reason is apparent, For by the premisses of the deed the Feoffor hath given the land unto the Feoffee and his heires, who had an estate in Fee, and by the Habendum hee hath excluded the Feoffee to have fee in the same land, and so the habendum repugnant unto the premisses of the deed and therefore void.

163. And if two men are enfeoffed by deed, To have and to hold unto one of them. This Habendum is void causa patet. But if three men are enfeoffed by deed, and in the premisses of the deed no estate be expressed: To have and to hold to one of them and his heires. hee hath a fee simple expectant of the whole land upon the lives of the other two his joynt Feoffees, and all three of them are joynttenants of the whole Freehold.

164. If Lands bee given to John and Alice his wife, and unto the heires of the body of John begotten, and it it happen, that Alice and John dye without heires of their bodies begotten betwixt them, that then their Land shall remaine unto the right heires of Henry; this Contingat is good, and may stand with the premisses, and therefore is good. &c. And if J. S. be enfeoffed, to have and to hold, to J. S. and T. R. and liverie of seisin is made unto J. S. according unto the deed;

1r. E. 3. varia. 77. H. 5. h. 4. 3

it

it is void unto T. B. But if liverie of seisin had bene made unto T. B. according unto the deed, Then he takes by the liverie of seisin and not by the deed.

165. And if a man be enfeoffed by deed of two acres, To have and to hold those acres, and liverie of seisin be made unto him according unto the deed in the two acres, the third acre of which there was no speech in the premisses of the deed, shall not passe by the deed: but if livery and seisin be made in this acre, then it shall passe by the liverie of seisin &c. And it hath beene holden, that by the words compriſed in the clause of warranty, the estate shall be altered, but the same is not Law as I thinke.

11. E. 3. title. 3.

166. And therefore, if lands be given by these words, Sciant &c. quod ego &c. dedi D. & I. uxori ejus, & ego the Feoffer, warr. predict. terras, &c. dict. D. & I. uxori ejus, & hæred. de corpore eorum exeunt. and livery of seisin be made according to the deed, they shall not have any estate but for their lives, &c.

167. But if a man be enfeoffed of one acre of Land and no estate is expressed in the premisses of the deed. To have and to hold unto him and his heires the Habendum is good and effectuall because it is not repugnant, for it includes the premisses and more. For if Livery of seisin be made, and no estate expressed to him to whom the liverie is made, he hath an estate for his life &c. And by the Ha-

Habendum he had an estate in fee, which includes the premisses of the deed and more, &c. So shall it bee if an estate for yeares, or for life, or for the life of another be expressed in the premisses of the deed; To have and to hold to him and his heires, &c.

168. And if an estate taile had beene expressed in the premisses of the Deed, Now by this Habendum it hath beene holden by some men, The Feoffee shall take nothing but the Habendum is void, and the deed shall take all its effect upon the premisses which is not law, (as I think) But that the Habendum shall take effect to such intent, viz. That the estate taile shall bee execute in the Donee, by force of the premisses of the deed, and the fee simple shall be in him expectant upon the estate taile, by force of the Habendum &c. 11. 45. E. 3. 20. P. 5. h. 5. 6.

169. If land be given by deed Reginaldo, & K. vx. ejus, & hæred. eorum & aliis hæred. dict. Reginaldi, & si dict. hæred. dicti Reginald & K. obierint sine hæred. de se procreat. this is a good estate taile, And the reason wherefore these words in the Case of the deed are effectuall is, because they are not repugnant unto the premisses, for their heires are not entended to have the land by these words, but it is by them declared what manner of heires shall have this land: and so they may stand together &c. 17.

170. And it hath beene holden by some men,

men, that if lands bee given by the premisses of a deed unto two men and their heires, To have and to hold to them, and to their heires of their two bodies begotten, that the Donees have estate in taile, and also fee-simple expectant upon the estate taile, which is not law as I conceive; for they have a joynt estate for their lives, and are tenants in common of the estate taile, and they have not any fee simple, and the reason is apparent. &c.

Lib. Ass. p.14. 171. And if Lands bee given unto a Man and his heires, if he hath issue of his body, and if he dye without heire of his body, that then it shall revert unto the donor, this is a good estate taile. And if Lands be given by deed, by these words, Dedi &c. totam meam, &c Habend. et tenen. &c. sibi & hæred suis, terram si hæred. de carne sua habuerit, Et si nullos hæredes de carne sua habuerit, revertatur dict. terra, ad me, the Donor, et ad hæredes meos, this is an estate in taile. And if land be given by deed, viz. D. dedit I. et A. uxor, ejus et uni hæred. de corpore suo legiti. procreata et uni hæred. ipsius hæredis tantum; it hath beene holden the same as an estate in taile, tamen quære.

37. Ass. p. 15.

39. Ass. p. 20.

172. And it hath beene holden, if land be given unto a man by deed and to his heires of his body issuing, and if his first issue dye without heire of his body issuing that then the land shall revert unto the Donor, and the Donee hath issue three sonnes and dyeth and his eldest sonne dyeth

eth without iſſue; notwithſtanding theſe words, his eldeſt ſon ſhall have this land &c. And the reaſon is becauſe that theſe words in (if his firſt iſſue dye without heire of his body) are repugnant unto the word going before, tamen quære. For ſome men think contrary, for that theſe words are but a declaration, which iſſue of the body of the donee, ſhall have the land, &c.

173. And if land be given by deed unto J. S. Et ſi contingat ipſum obire ſine hærede de corpore ſuo, quod tunc revertat. to the donor and his heires, without any Habendum in the deed, and literie of ſeiſin is made according to the deed as ought to be intended. in this caſe the donee hath an eſtate in taile, notwithſtanding that it is not given unto him and his heires. For the ſtatute of Weſt. 2. cap. 1. wills. Quod voluntas Donatoris ſecundum formam in charta doni ſui manifeſte expreſſam, de cætero obſervetur.

174. And if lands be given unto J. S. and T. R. in the præmiſſes of the deed and no eſtate is expreſſed in the præmiſſes of the deed, To have and to hold unto J. S for life, the remainder unto T. R. and his heires, this habendum is good, and effectuall, becauſe it is not repugnant unto the præmiſſes: but makes a declaration of the præmiſſes, how they ſhall take the land, &c.

175. And if one acre of Land be given unto two by deed, To have and to hold one moitie to one and his heires, and To

Have

have and to hold the one moitie unto the other and the heires of his bodie issuing, the Habendum is good and effectuall: But if the premisses of the deed are of two acres, and the habendum is but of one acre, and the estate of none of them is inlarged by the Habendum it is a void Habendum, because that it excludes the Feoffees of part of that which was given.

176. As put the case. White acre and black acre, are given unto I. S. and T. R. and unto their heires, To have and to hold white acre unto them and unto their heires, the habendum is void: But if this acre bee warranted unto them, this warranty is good, notwithstanding it doth not extend unto all their land which was given or unto all the persons as were enfeoffed, &c. For if the warranty bee made by one of the feoffers, it is good enough.

177. And if land be given unto two for the terme of their lives in the premisses of the deed, To have and to hold the moitie of this land to them and unto their heires, the habendum is good, because it is not repugnant, for by the habendum their estate is enlarged in the moitie, so as they have a fee simple in this moitie, and a free hold in the other moitie &c. And if land be given unto husband and wife, To have and to hold, &c. unto the husband for life, and unto the wife and her heires, the Habendum is good and effectuall, &c.

178. Now

178. Now is to shew, to what person words incertaine contained in a deed shall have relation, And for that, know, That if an Abbot make a grant by such words, viz. A. D. abbot of such a place, &c. grant, quandam annuam pensionem ac T. D. ac rogatum I. de Exon. illam pensionem quam idem I de Exon habuit pro termino vitæ suæ in festo natalis Domini et Paschæ, percipiend. quousque sibi de competento beneficio fuerit provisum, &c. These words, &c. (quousque sibi) shall have relation unto the Grantee. P.22.E.3 4.

179 And if a deed bee made in this forme, viz. Noverint universi per præsentes nos de com. assensu, &c. Dedisse, &c. W. H. et hæredibus suis unum dostum quo jacet &c. Habendum, &c. reddend. nobis & successoribus nostris xii.d. & pro hac concessione predict. W. H. renunciavit totam Communiam cum diversis averiis nostris &c. These words in the deed, (renunciavit totam communiam suam) shall have relation unto the Abbot and Covent in consideration of the premisses in the deed, tamen quære. M.9.h.6. 35.

180, And if a man by his Obligation doth acknowledge himselfe to be endebt unto the Obligee twenty in quarters of corne, to be delivered unto the obligee, at such a place &c. and to perform the same, he viz. the Obligor acknowledgeth himselfe to be bounden in 100. shillings, and doth not say, To who hee doth acknowledge himself to be bounden, In this case it

it shall be taken, that hee is bound unto the obligee of the corn in consideration of the premisses of the obligation.

181. If a man seised of land, in fee thereof enfeoffe me by deed, Habendum et tenendum mihi et hæred. meis, And moreover by the same deed grant the same land unto me, and hæred. prædict. this word (prædict) shall have relation unto my heires: But if a rent be granted unto J. D. and T. R. to perceave unto them and their heires, and dos not shew whose heires; the Grantees shall estate but for their lives.

M. 45. E. 3 taile. 14. 20. h. 6. Fests. 8. 19. h. 6. 73

CHA.

Chap. III.

Feoffments.

182. NOw is to speake of Feoffments. And forasmuch a Feoffment cannot take effect without livery and seisin, something shall bee said what persons may make livery of seisin, & what persons may take by livery & seisin and how, and in what manner and forme liverie of seisin ought to be made. And when the liverie of seisin shall bee void, for the presence of man or woman upon the land, who will not agree and assent unto the liverie of seisin, &c. And when by liverie of seisin in one acre many acres shall passe, and when Feoffees shall have an estate of inheritance, without speaking of their Heires or Successors.

183. And it is to bee knowne, That

There are some persons who may make livorie of seisin in their owne right and also as servants unto others: And some persons who cannot make livorie of seisin in their owne right, but as servants unto others, they may. And some persons may make livorie of seisin by themselves in their owne right unto some persons and unto others they cannot, and some persons shall make Liverie of seisin, and take by the same liverie, &c.

184. And it is to be knowne, That all such persons as may grant by themselves may make liverie of seisin bpt themselves viz. in their owne right, and as servants unto others, in the same manner and form as they may grant, &c. Mutatis mutandis, &c. And as to such persons see the Chapter of Grants, mutatis mutandis, &c.

185. And as to such persons, as cannot make liverie of seisin in their owne right, but as servants unto others, may, know, That a Monke, Frier, Canon, professed, nor a married woman cannot make liverie of seisin by themselves, viz. in their owne right, and if they doe make any livery of seisin in their owne right, it is void, and the reason is, because that such persons professed in Religion, cannot 9.E.3.28 have any land in their owne right, unlesse it be severed from the same house of Religion, &c.

186. And notwithstanding that a married woman may bee seised in her owne right

right with her husband, yet liverie and seisin made by her alone without the agreement of her husband is void, insomuch that her husband and she may have an assise notwithstanding such liverie of seisin, if the husband be seised of the freehold in the right of his wife: But in such case, If the husband were seised in his owne right, then notwithstanding such liverie of seisin made by the wife, hee shall have an Assise in his owne name, &c.

187. But if a Nonne or other person professed in Religion, or a married woman make livorie of seisin according to the deed of a person able to make a feoffment in his owne right, and by Letter of Attorney made by the same Feoffer so to doe, then such feoffment is good, because that the Feoffee in such case is not in the land by him that makes the livorie of seisin, but is in the land by the Feoffor. But if they doe not make such liverie of seisin according to their warrant of Attorney make liverie of seisin. Then in some cases it is a disseisin unto the Feoffor, &c. P. 16. E. 4. 46.

188. And therefore, If a monke, or &c. hath a warrant of Attorney to make livery of seisin upon condition, and he make livery of seisin without condition this is a disseisie unto the Feoffor. And if the warrant of Attorney bee, to make liverie of seisin after the death of a stranger, and he make livery of seisin in his life time, this is a disseisin unto the Feoffor, and if [illegible] M. 11. E. 4. 3. 40. Ass. p. 38.

verie of seisin should bee made unto two,
12.Ass.p. and he make liverie of seisin but unto one
24,fest.82 of them, and doth not make liverie of
40.Ass.26 Seisin according to the deed, this is a
p.38. disseisin unto the Feoffor, and the reason in these cases is, because hee hath disobeyed the commandement of his Master.

189. But if he, viz. the attorney doe the command of his Master and more; yet it shall bee good for that which hath reference unto his commandement, and void for the rest, if not that it be in speciall cases. As put case, the warrant of attourney bee to make liverie of seisin unto one man, and the attorney make liverie of seisin unto two, it is good to him to whom the warrant doth extend, and void unto the other. And so is it, If the warrant of attorney be to make Liverie of seisin of black acre, and the Attorney make liverie of seisin of white acre and black acre, in this case all is not void, for it is good for black acre, and the reason is, because the attorney hath done all the commandement of his Master, and more.

190. As if I give licence unto a Man to take my white horse, and he take my white horse and my black horse, in this case he is trespasser in taking the black horse, but not in taking the white horse, and the reason in this case is, because it is a licence in deed, and hee hath done all and more, &c. But if a Lease for years be

bee of a House, and the Lessor enter into the House to see if wast bee committed or not that is lawfully done; But if at the same time the Lessor carry away any of the goods of the Lessee against the will of the Lessee, in this Case the Lessor shall bee punished for his entry, and yet the same was lawfull at the beginning, and the reason is because that when the Law gives a man a Libertie unto a certaine intent, and hee use this Libertie unto another intent or misuse, it bee shall bee a Trespasser from the beginning, if not that it bee in speciall cases, &c. T. 15. h. 4.

191. And therefore, If a man enter into a Taberne to drinke, and when hee hath drunke hee carrieth away the Cup without the will of the Taberner, now he shall be punished for his first entrie, For it cannot be intended that his entrie was unto any other intent, but to steale the Cup, for the Law cannot judge his intent against his Act done, ex post facto: The same Law is, If a distresse bee taken, for doing damnages: or for a Rent Service, and the same bee misused; Quære if A Distresse bee taken for a Rent charge, and bee misused. And so is the difference betweene a licence in fatt, and a licence in Law, &c. M. 5. h. 7. 11.

21.Aff.p. 19. 192. But if a warrant of Attorney be made to make livery of seisin unto two Pers, and one of them die before the liverie of seisin made, and the Attorney make livery of seisin according unto the deed unto the other Feoffee who is living, it is good unto him for all the land. And so is it if one of the Feoffees be professed Frier before the liverie of seisin made, Causa patet, &c. And it hath been holden That if a warrant of Attorney bee made to make liverie of seisin with condition that it if a disseisin unto the Feoffors; tamen Quære, because that the Attorney hath done all the commandement of his Master and more.

193. And it is to understand. That there are some persons who make livery of seisin in their owne right unto some persons, and unto other persons they cannot, notwithstanding that such persons are of ability in law, to take liverie of seisin by force of Feoffments of other men of abilities in law to make Feoffments. And therefore, if two toyntenbee, one of them cannot enfeoffe his companion, because hee cannot make liverie of seisin unto him: But if two coperceners be, one of them may enfeoffe the other of his part and portion: and if two Coperceners bee, one of them may release unto the other, and it shall bee good and effectuall to give an estate in his part to the releasee.

H.11.h.6. 42. P. 10.E. 4.5. 21.E.3. 27.

794. And if a contract of Mariage bee betweene a man and a woman, yet one of them may enfeoff the other, for yet they are not one person in law, in so much as, If the woman dye before the marriage solemnized betwixt them, The man unto whom she was contract, shall not have the goods of the wife as her husband, but the wife thereof may make a will without the agreement of him unto whom she was contracted, &c. P. 32. E. 3 12.

795. And it hath beene holden, That if a man contract himselfe unto a woman, ad postea cognovit eam carnaliter, and afterwards hee doth enfeoff the same woman of a carue of land, and puts her in seisin thereof, and afterwards marrieth her in facie Ecclesiæ, that this Feoffment is void, because that it is made post fidem datam, & carnalem copulam, & sic tanquam inter virum & uxorem: for that the mariage is subsequent, &c. But at this day if such a Feoffment bee made, it is good enough. But after the mariage celebrated betweene a man and a woman, the man cannot enfeoff his wife, for then they are as one person in law. M. 16 h. 3 fests. 17.

116 But in diverse Cases a man may be a meanes to make a thing passe unto his wife, which shall not immediately passe from him. And therefore if a man enfeoffe a married woman, and make a letter of attourney unto the husband to make livery of seisin according to the deed, and he make liveris of seisin according

ding to the deed, and he make liverie of seisin accordingly. It is a good Feoffment, for the husband is but a meanes to convey the freehold to the wife, for by this act done no freehold doth passe from the person &c.

197. And it hath been said, that if two joynt-tennants be in fee, and none of them lease that which belongeth unto him unto a stranger for yeares, the remainder for life in taile, or in fee, to his companion, And liverie of seisin is made unto the Lessee for yeares accordingly; that this remainder is good. But it seemeth the Remainder is not good, for it had not beene good if liverie of seisin had not beene made unto the Lessee for yeares; So it appeareth, That the Remainder shall passe by the Liverie of Seisin, and one joynt-tennant cannot make Liverie and Seisin unto his companion, &c. Ideo quære. And if a man disseise me of a Carne of Land, he cannot enterre me by matter in deed; because my entry is lawfull upon him, &c.

198. And it is to bee knowne, that some make liverie of seisin, and take by the same liverie of seisin, but then they doe not make liverie of seisin in their owne right, or otherwise they doe not take by the liverie of seisin in their own right, if not ꝑ it be in speciall cases, &c, & therefore if Land be leased for life unto J. S. the Remainder unto T.

R.

B. in Fee, And a Letter of Attourney is made unto T. B. to make liverie of seisin, and hee make liverie of seisin unto the Lessee accordingly, in this case he takes by the same liverie of seisin which hee himselfe made, but not of his owne Grant, for hee made the same as Servant unto his Grantor.

199. And it is said, that if a man enfeoffe two by deed, and makes a letter of Attorney unto one of them to make liverie of seisin, and hee make liverie of seisin according unto the deed unto his companion, hee himselfe who makes the liverie of seisin shall take by the same liverie of seisin, because he shall bee in by the feoffer, and not by himselfe &c. And if a man seised of land in the right of his wife lease the same land for life reserving rent, and makes a Letter of attorney unto the wife to make liverie of Seisin, and she make liverie of Seisin accordingly, and the husband dye, and the wife accept the rent, yet she shall have Cui in vita, for this acceptance, cannot make the lease good, in so much, as she is a stranger unto the Lessee, for the lessee tooke nothing by the wife notwithstanding that she made liverie of seisin, for she made that but as servant unto her husband &c. T. 26. h. 8

200. But if a Man Lease Lands for life, and the Lessee thereof enfeoffe a stranger, and makes a Letter of

of attorney unto his Lessor to make livery of Seisin accordingly, and he makes liverie of seisin, in this case it hath beene said by some persons, That the Lessor may enter upon the Feoffee for a forfeiture, notwithstanding the Livery of seisin made by him, for they say that the feoffee tooke nothing by him, for the Lessor had nothing to doe upon the land, if not to see whether waste were done, or to distraine for his rent and services, if they were behinde. And if the Lessor be vouched and he hath not other possession in the same land, after the title of the Writ, in which writ he is vouched, but by making of livorie of seisin by force of the letter of attorney, the demandant may well counterpleade the voucher, &c.

201. And if my disseisor be disseised, and brings Assise of Novel disseisin, I may well give in evidence this disseisin, and yet I shall have assise against my disseisor, &c. And against that it may bee said, that the lessor shall not enter for the forfeiture, because hee is partie unto the wrong, viz. the discontinuance of the reversion, for nothing of the freehold passeth unto the feoffee, if not by the livorie of seisin, & lessor himself made the livery of seisin, which is an agreement of him, that the feoffee shall take by force of the feoffment, & he who is partie to ꝑ doing of wrong shall not take advantage thereof.

M. 18. h. 8 f. 202. As if Lessor and Lessee for yeares &c. ioyne in the cutting downe of twentie

tie Dakes growing upon the lands leased, the Lessor shall not punish the same in an action of waste, &c. And the heire who is partie unto the death of his father shall not have an appeale thereof; and if the issue in taile disseise the discontinuance of his father, and thereof enfeoffe his Father, and the father die seised, and the issue in taile enter he shall not be remitted &c.

203. And if Lessee for life of an acre of land lease the same acre unto his lessor for yeares, the remainder unto a stranger in fee, and make liverie of seisin unto the lessor, it is no forfeiture. And if tenant for tearme of life, enfeoffe the wife of his lessor of the same land, and makes a letter of attorney unto his lessor to make livorie of seisin, which is made accordingly it is no forfeiture, &c. And it is to bee knowne that if a man make a deed of feoffment of his owne land unto himselfe and unto a stranger, and make liverie of seisin unto the stranger according to the deed, all shall passe unto the stranger, and nothing unto himselfe, for that hee cannot give unto himselfe as this case is, &c.

204. If a feoffment bee made unto a Monke professed and unto a stranger by deed; and liverie of seisin is made unto the stranger according to the deed, all passeth unto the stranger: But in the same case, if liverie and seisin bee made unto the Monke according to the deed, and

not

not unto the ſtranger, nothing ſhall paſſe thereby. And if a man make a deed of feoffment unto two, and one of them dye before liverie of ſeiſin made according to the deed, and afterwards liverie of ſeiſin is made unto him.

205. And unto divers reſpects a man ſhall take by a liverie of ſeiſin which he made in his owne right, but then he ſhall not take in his owne right: if not that it bee in ſpeciall caſes. And therefore if Deane and Chapter are, and one of the Chapter is ſole ſeiſed in fee in his owne right of land, and thereof by deed enfeoffe the Deane and Chapter, and make liverie of ſeiſin according to the deed, in this caſe the Feoffor giveth and taketh by the ſame gift in divers reſpects. And ſo ſhall it be of Maior and communaltie, if one of the communaltie be ſeiſed of land in his owne right, and thereof enfeoffe the Maior and Communaltie. And it is to be known that ſuch perſons as are in poſſeſſion of lands for yeares, or for life, &c. cannot take liverie of ſeiſin of the ſame Land. &c.

H. 22. b. 6 43.

206. Now is to ſhew, How, and in what manner Livery and ſeiſin ought to be made. And it is to be knowne, that of a rent Recovered, If the Sheriffe put the partie who recovered in ſeiſin, by the herbes growing upon the land out of which the rent is iſſuing, or by a bough or a twig of a tree growing upon the land out of which the rent is iſſuing

3 l. p. 40. E. 22.

ing, or by diſtreſſe of Cattell levant and couchant upon the ſame land, or by a clod of the ſame land, this is a ſufficient ſeiſin, notwithſtanding that the day of payment of the rent be not yet come: But then the partie cannot driue ſuch beaſts with him out of the ſame place, &c. 3. E. 3. F. N. Aſſ. 444.

207. And if a man came into a rent by purchaſe, &c. Then it behooveth that he be ſeiſed of ſuch things which is of the nature of the rent, and not of other things, if not that it be in ſpeciall caſes.

208. And if a man recover land, hee may enter into the Land recovered if his demand be certaine, as of one acre, three acres, or a carue of land, &c. or hee may ſue execution by Habere facias ſeiſinam, and then the Sheriff may put him in ſeiſin by deliverie unto him a bough, or a twig of a tree, or hearbs growing upon the land, or by deliverie unto him of a clod of the ſame land in the name of ſeiſin, &c. and if the recoverie be of a houſe, then the Sheriff may put him in ſeiſin by deliverie unto him the ring of the doore; Or otherwiſe he may open the houſe doore, and ſay to him, that he enter into the houſe and take ſeiſin there of by force of the recoverie T. 49. E. 3. 23.

209. And it is to be knowne, That the manner, for to deliver ſeiſin of land by force off a feoffment, is to remove all perſons of the land, and the one being upon the land in the preſence of all the perſons that are there to ſhew the cauſe of their com- 39. Aſſ. p. 12.

comming and then if the feoffment be by deed, to read the deed in English, and the deed being read, the Feoffor to enter into the land, and take a clod of the same land, and deliver the same with the deed, as the deed unto the feoffee in the name of seisin of the same land, To have hold and enioy according unto the purport of the same deed, &c.

210. And so and in the same manner shall it be done if livery of seisin be to be made by a stranger by force of a warrant of attorney. Mutatis mutandis, &c. And if a feoffment be made by word, it appeareth out of what is before, how and in what manner Liverie of seisin shall bee made; and also if a feoffment be made of a house, it appeareth out of the premisses how and in what manner liverie of seisin shall be made, And if a Feoffment be made of a house or land by deed, and the Feoffer in comming to the house, or land with the Feoffee and others. &c. read the deed of feoffment, and afterwards goe vnto the house or land, and deliverd seisin accordingly, it is good, notwithstanding that ỳ feoffer remaine upon ỳ land or in the house all the time, and take the profit, at the sufferance of the feoffee.

211. And if a man lying upon his death bed in his house, make a charter of
17. Aff. p. 61. feoffment of the same house, and deliver
11. Aff. p. 6. the same unto the Feoffee, saying, have and hold this house according to the purport and effect of this charter, and the se-

offer by force thereof take seisin, notwithstanding that the Feoffor continue in the same house and there dye, it is a good liverie of seisin and a good feoffment.

212. And if a man lying sicke within a Manor, sell the Manor unto a stranger, and saith unto him, that he wills that hee shall take seisin presently, and commandeth all his servants to be attendants upon him as their Lord and master, and thereupon the vendee taketh seisin, and perhaps giveth unto the servants twenty shillings, to drinke, and the Tenants of the Master attorn unto him, and the vendee goeth from the Manor about his business. and the Feoffor dyeth upon the same Manor; yet it is a good liverie of seisin according to the words of the estate &c. And it is to be known, that Livery of seisin may bee made of land, or of a house within the view. 43. Ass. p. 29.

213. And therefore If I deliver a deed of Feoffment unto you, and shew unto you the lands or tenements, and say unto you, That I will, that you enter into the same lands or Tenements, to have and hold according to the purport and effect of the deed, and deliver unto you the deed as my deed, and you enter into the same lands &c. this is a good feoffment, &c.

214. And if a man make a deed of feoffment unto Alice at Style, and afterwards the Feoffer and the said Alice come

P.38.E.3 5. unto the Church dooze to be married, and the Feoffor delivereth the same deed unto Alice, and sheweth unto her the Tenements which are comprised in the deed, and saith unto her, that he will that she shall have the same tenements which she leeth, and afterwards they are married together, and the husband ever after claimeth a thing therein but in the right of the said Alice, this is a good Feoffment notwithstanding that Alice doth not enter, for the entry of the husband is sufficient for her.

215. And it is said, that if a man make a deed of Feoffment in my name of Land whereof I am seised, and commeth unto me, and prayeth me that I would deliver unto him seisin of the same Land contain-
P.43.E.3 fects.51. ed in the deed, according unto the purport and effect of the deed, and I take the deed, and read it, And then I say unto him, Sir, I deliver unto you this deed as my deed in the name of seisin of all the Lands, tenements and other things comprised in the deed, To have and to hold according to the purport and effect of the deed, and by the force thereof the Feoffee presently enter this is a good Feoffment, &c.

216. And it hath beene said, That if there be Father and Sonne, and the Father is seised of Land whereof he enfeoffeth his Sonne, And the sonne after livery of seisin made unto him, suffer his father to occupie the same land, who is contented to occupie the same at the will of the

the sonne, and afterwards the sonne commeth unto the parish Church of the town where the land lye, and there in the hearing of the parishioners saith unto his Father. Father you have given unto me lands, and declareth the certaintie thereof, &c. and as fully as you have given them unto me, I doe give them back unto you, and the father by force of these words doth presently enter into the lands that this is a good Feoffment, which is not law at this day as I think. &c.

217 But a man may assign dower unto his wife at the Church doore in one countie of lands in another countie without deed, the reason is because that the assignement of dower cannot be made before the contract bee finished by them at the Church doore and then they are but one person in Law, &c M.40.E.3 43.

218. And it is to be knowne. That sometimes liverie of seisin shall be veid by the being of another person upon the land and Tenements whereof the livery of seisin is made, who is no partie to the liverie of seisin. And as unto that, know that when 2 men come upon lands and tenements together to claim the said lands, and Tenements, and one of them claimeth by one title, & ye other claimeth by another title, the law doth adiudg the possession in him who hath rightfull title unto the possession. For if a Disseisor bee of one acre of Land who dyeth seised of the same land in Fee, and the heire of

the disseisor, and the disseisée come upon the same land together to claim the same land, the law will adiudge the possession of the land in the heire of the disseisor, and not in the disseisée, yet the disseisée habet majus jus ad rem viz. in jure, to have the land, then the heire of the disseisée hath. But the heire of the disseisor hath majus jus in re, viz. in possessione, to have the land, then the disseisée hath. And therefore, &c.

219. And if a man enter into my lands by wrongfull title, and I being there, he doth enfeoff a stranger thereof, and doth deliver unto him seisin, it is void, for he cannot give seisin before he himselfe hath seisin, and hee had not seisin at the time of the liverie of seisin, for the law will adiudge the possession in me, who have right unto the possession, because that I am present at the time of the deliverie of seisin.

220. And if two ioynttennants are in fee, and one of them doth enfeoff a stranger of the whole against the will of his companion being upon the land, by this feoffment but the moitie passeth: Causa patet. And if the Lessor for yeares enter upon the Lessée, and against the will of the lessée, the lessée being upon the land, the Lessor doth enfeoff thereof a stranger by deed, this feoffment availeth nothing as a feoffment, for a feoffment cannot take effect without liverie of seisin, and the Lessor cannot make liverie of seisin against the will of the Lessée, the Lessée be-

2. Ass. p. 1 H. 2. 3, 4
7. Ass. p. 8

being upon the land, because the law doth adiudge him in possession, &c. and without a possession a man cannot make liverie of seisin &c.

221. And that is the cause, That if a lease for yeares be of land, and the Lessor grant the reversion unto a stranger and the Lessee attorne, that the freehold shall passe without liverie of seisin, because that the Lessor cannot make livery of seisin, without wrong done unto the Lessee, &c.

222. But if Lessee for yeares enter of a stranger the Lessor being upon the land, yet the Land shall passe by the feoffment, but perhaps if he continue upon the land claiming the same after the feoffment, the same doth countervaile an entrie for a forfeiture. And the reason wherefore it passeth by such Feoffment is because that the Lessor had nothing to doe to meddle with the possession of the Land during the Terme, But hee may come and see whether Waste be done, or for to distreine for his rent if it bee behinde, &c.

223. And if husband and wife purchase land joyntly in fee, and the possession be executed in them accordingly, and afterwards the husband doth enfeoff a stranger in fee, and the wife saith that shee will not agree thereunto; nor goe off the land, but continueth there at the time of the liverie of seisin, notwithstanding the same; all the land doth passe by the feoffment. H 2 224.

H. 11. E. 6.

T.12.E.3 3.4. Fetis, 29.

224. But if Maior and Comminaltie be wyntly seised of any land in fee, and the Maior against the will of the Comminaltie doth enfeoffe a stranger of the same land, the comminaltie being upon the land when liverie of seisin is made, nothing passeth by this Feoffment, &c.

225. And if the Deane make a Feoffment without the assent of the Chapter in his owne name of Land in which he is joyntly seised with the Chapter, the Chapter being upon the Land at the time of the liverie of seisin, nothing shall passe by this liverie of seisin. But if an Abbot make a feoffment without the assent of the Covent in his owne name of land parcel of the Monasterie, the Covent being upon the land at the time of the Liverie of seisin, yet the Land shall passe by this Feoffment, &c.

226. Now is to shew; When by Liverie of seisin of one acre of Land, or of a parcell of an acre of Land, or of one Tenement, in the name of many acres or tenements, all shall passe: and as to that, it is to be knowne, that if a feoffement be made generally of all the land which the Feoffor hath within the Countie of Middlesex, and he hath lands in twenty severall places within the same Countie, and makes liverie of seisin in one acre or in one house in the name of all the lands and tennements which he hath in the same Countie. By this liverie of seisin all passe &c. in so much as if such

such a feoffment be pleaded by deed of an hundred acres, and the Feoffor saith, that as unto twenty acres nothing passeth by the Deed, it is no good plea, Causa Patet, &c.

227. But by liverie of seisin in one Countie, the lands and Tenements in another Countie will not passe. Yet if the Scyte of the Manor of Dale be in the Countie of Esser, and parcell of the same Manor doth extend into the Countie of Middlesex, and a Feoffment be made of the manour of Dale, and liverie of seisin is made of the Scyte of the Manour which lyeth in the Countie of Esser, by this liverie of seisin, the parcell of the Manour which lyeth in Middlesex shall passe, because it is parcell of the thing, viz. the Manor of which the Feoffment was made. The which Manor is but as one thing to such purpose, &c.

228. But if a Feoffment bee made of the Manour of Dale in Dale, which Mannour extends into Dale and Sale and liverie of seisin is made accordingly in Dale, By this Feoffment nothing passeth but that which is in Dale, because that the Feoffment is not of more but of that which is in Dale, and the Liverie of seisin is made in Dale and not elsewhere, &c. T. 9. E. 4. 17.

229. And it is to be knowne, That if a man be disseised of two acres in several Countie, and the disseisee enter into one acre in the name of both acres, yet this entry

entrie shall not extend unto the acre lying in another Countie, in which acre the entrie was not made.

230 And if in an assise, the plaintiffe make his plaint of the manour of Dale, and the tenant pleade a feoffment of parcell of the said manour by deed, and therewith a deed of another Manour, viz. of the Manour of Sale, it is not to the purpose to make the same palle by the same deed for the Manour of Dale cannot be the manour of Sale, nec è converso. But if he had pleaded a feoffment of the moitie of the manour of Dale, by the name of the Manour of Sale, it should be otherwise because that the Manour of Dale may be knowne by the name of the Manour of Sale, &c.

T. 1. h. 7. 29.

231. And it is to be knowne, that if a man be seised of Land, and also of a rent charge issuing out of land which lyeth in the Countie in which the land whereof he is seised is, or in another Countie; and giveth the land and rent by a deed, bearing date in the countie where the land whereof he is seised, and liverie of seisin is made of the land, and the deed delivered as his deed, yet the rent shall not passe before attornment of the Tertenant, out of which it is issuing: But if the Tenant attorne in the life of the Grantor and Grantee, then the Rent shall passe, notwithstanding that the Tenant who doth attorne be another man than he that was Tertenant at the time of the grant, and not-

notwithstanding that the deed beareth date in another Countie, then the Land is out of which the Rent is issuing.

232. And it said, That if a man bee disseised of two acres of Land in one Countie, and he enter into one of the acres claiming the said acre only and maketh a deed of feoffment of both acres unto a stranger, and maketh Liverie of seisin according to the deed in the acre in which he entred, that both acres shall passe unto the Feoffee, because that this claime is nothing to the purpose because he had right of entrie before, &c. And both acres are in one Countie, so as his entry into one acre shall be entry into both acres notwithstanding the claime &c. Against which it may be said, that the acre into which the feoffee did not enter, shall not passe by the Feoffment; for when a man is out of possession of a thing severable, he is at libertie to continue his possession in it, in which part he will, and shall not be compelled for to recontinue his possession unto all in despight of him. P. 9. 1 25.

233. And therefore if a man be disseised of two acres being in one Countie, and the disseisor bring assise of one of them, as he may and recovereth the same acre, and enter into it by force of his recoverie, the entrie of this acre shall not be said an entrie into the other acre, notwithstanding that his entry was right full into the same acre, and notwithstan-

ing that both acres are in the same countie, if not that he enter in the same acre, in the name of both acres &c. Then in the principall case, the disseisee was out of possession of both acres, and he may suffer the disseisor to continue possession in them, if he will; And therefore insomuch as the acres are severable, and the disseisee hath not entred but into one of them claiming the same acre onely, this entrie cannot give him possession in both acres, and notwithstanding that after his entrie hee hath made a deed of feoffment of both acres and hath delivered seisin according to the deed in the acre in which he entred claiming that solely; yet that cannot bee said an entrie into the other acre, because the circumstance of this feoffment doth not give unto the feoffee possession of the acre in which the liverie of seisin was made, for the possession of that was in the Feoffer, by his entry made before, and so, &c.

234. And if Lord and villeine bee, and the villeine purchase two acres of lands in Fee lying in one Countie, and possession of them is executed to him according. ly, and the Lord of the villeyne enter into one acre, not claiming the other acre, and afterwards make a deed of feoffment of both acres unto a stranger, and make liverie of seisin in the acre in which hee hath entred according to the deed, yet the acre into which he did not enter shall not passe by the feoffment, &c.

235. And yet a man may enter as ſervant to the Lord, and by his commandement, and it ſhall be good, but notwithſtanding that the Feoffee doe ſo, yet hee cannot take that by the Feoffment, for a man cannot make liverie of ſeiſin before he himſelfe hath poſſeſſion, and at the time, viz. when he made liverie of ſeiſin he had not poſſeſſion but only of the acre in which he entred &c. The ſame Law is where a man hath title to enter into two acres for a condition broken, &c. mutatis mutandis. And ſo ſhall it be where a man hath title of entry into two acres of Lands holden of him becauſe, they are alienes in Mortmaine, &c.

236. Now is to ſhew when the Feoffees ſhall have an eſtate of inheritance, without ſpeech of their heires or ſucceſſors. And as to that know, That it is a common Rule in Law, That if lands be given in Frankemariage unto a man with the kinſwoman of the donor of the whole blood by theſe words (Frank-mariage) they have an eſtate in ſpeciall taile if they inter-marry. And if in ſuch caſe the huſband dy, and the ſame donor giveth more lands in Franckmariage unto a ſecond huſband of the ſame woman, this is a good Frankmariage.

237. And a gift in Frankmariage made after the marriage is good, and yet ſome have ſaid the contrary, and their reaſon is, becauſe that the gift in Frankmariage ought to be made for advancement

H. 4. E. 3. 8.

dancement of the huswoman of the donor by mariage, and therefore such a gift made after the mariage cannot be intended to that purpose. Against which it may be said, that such a deed made to such persons after the mariage between them may be the cause of the mariage aswell as if such a gift had been made unto them before the mariage.

238. And if after such guift in Frank-Mariage, and after the marriage solemnized betweene the Donees, the Donees are divorced at the suit of the husband, in this case the woman shall hold the whole land, and the husband shall have none of it. But if such a divorse be in other gifts, in speciall taile by expresse words, yet they shall hold the Land so given joyntly, dureing their lives, &c. 11. Ass. p. 33.

239. And if Lands or Tenements be devised by Will, unto a man and his Assignees, In perpetuum. By these words he shall have a Fee simple. See more of that in the Chapter of Devises, &c. M. 11. E. 3. 16.

240. And it is to know, That if lands bee given unto Maior and Comminaltie for their lives, by intendment they have an estate not determinable. So if a Feoffment bee made of Lands unto a Deane and Chapter without speech of their Successors. T. 11. E. 4 Feils. 38.

241.

241. And if my Feoffee in Fee of one Acre of Land, doe reinfeoff mee of the same acre by deed reciting in the same Deed, That I have enfeoffed him of an Acre of Land, to have and to hold to him and his heires. And saith farther in the deed, that as fully as I have given the Lands unto him, hee doth give mee them back againe, and delivereth to mee the Deed as his deed, and seisin of the land according to the Deed, in this case it seemeth, That I have an estate of Inheritance in this Land notwithstanding that it is not given unto mee and my heires, because that my estate doth relie upon an estate of Inheritance, recited within the same deed, tamen quære. T. 11. h. 4. 84. 39. Ass. p. 12.

242. And if I be enfeoffed by Deed of an acre of land, to have and to hold the same land to mee and my heires, and by the same Deed the Feoffor bindes him and his heires to warrant the same land, in forma prædicta. By these words I and my heires shall vouch by this warrantie, and yet I nor my heires are not named in the clause of the warrantie, &c. But by these words (forma prædicta) the Warranty relates unto the words precedent in the Deed. And the nature of a Warrantie, is properly to runne with the estate. &c And these words (forma prædicta) helpe this matter, &c. 11. 14. h. 13.

243

T.10.h.6 46.

243. But if land be given unto me by deed to have and to hold to mee in Fee, without speaking of my heires, and liverie of seisin be made unto mee according to the purport of the deed, By this Feoffment, I have an estate but for the terme of my life, &c.

CHA.

Chap. IV.

Exchanges.

NOw are we to speake of Exchanges, And it is to be knowne. That Exchanges are made of such things, and of such estates as may passe by liverie of seisin; and if the things exchanged are in the same Countie, the exchange is good without Deed, if not that it bee in speciall cases: As put the case, Exchange be made betweene I. D. and T. R. of the land which one hath in the Countie of Middlesex for Land which the other hath in the same Countie. &c. But if the lands of I. D. of which the exchange is made are in one Countie, And the lands of T. R. of which the Exchange is made are in another Countie, Then the exchange ought to bee by deed Indented if the estate which the parties take by the Exchange 9 E. 4. 39. 45. E. 3. 20

change be of an eſtate of Freehold or inheritance: But if the eſtate in the exchange bee for yeares then the exchange is good and effectuall without deed, notwithſtanding that the Land of the one which is taken in exchange bee in one countie, and the lands of the other which is taken in exchange bee in another Countie.

245. But if Exchange bee made of any thing which lyeth in Grant, and cannot paſſe by liverie of ſeiſin, then the exchange ought to bee by deed, of what eſtate ſoever the exchange is taken, notwithſtanding that every thing of which the exchange is taken bee in the ſame Countie.

246. As put caſe, Exchange be taken of rent for Land, and the Land out of which the rent is iſſuing) and the Land whereof the exchange is taken, are in
3. E. 4. 19. one Countie, then hee who ſhall have the rent in exchange for the land, ought to have a deed of the ſame, proving the exchange. But it is ſaid that it behoveth not him who hath the land in exchange for the rent to have a deed proving the exchange, tamen quære. For in exchange there ought to be two grants, and in every grant mention ought to bee made of every thing taken in exchange and ſo, &c. And therefore it is well done that in ſuch caſe the exchange be by deed indented.

247.

247. But if an Exchange be taken of the reversion of one acre of Land for three shillings Rent issuing of the other acre of Land, and both acres are in one Countie, it behoveth that such exchange be by deed indented.

248. And so it is if exchange bee taken of one acre of land, and of rent issuing out of another acre of Land, for common for three Beasts, in another acre of Land, and also for another acre of Land, & all ỳ Land is in one Countie, such exchange ought to be by deed indented, &c. because that one land only is not taken for other Land only nor one acre only is not taken in Exchange for Common only, &c. But the Land and the rent are taken in exchange, for the Common and the Land and the rent is not parcell of the Land nor appendant to it, Nor the Common is not parcell of the Land taken in Exchange, nor appendant.

249. But if J. S. be seised of a Manour unto which he hath Common appendant or appertenant T. R. is seised of another Manour unto which hee hath a Villaine Regardant, and both Manours are in one Countie, and an exchange is betwixt them of the Manours, the common shall passe unto the one with the Manour, and the villaine unto the other with the Manour without deed. But they shall not distraine for the services of the Tenants of the Mannours without their attornement

250

M. 9. E. 4. 39.

250. But if I. S. have an office unto which land is appertaining, and T. R. have a rent issuing of the land of a stranger, and all the Land is in one countie, and the office is to be used and exercised in the same Countie, and exchange thereof is taken betwixt them, it behooveth that such exchange be by deed indented. Causa patet.

251. And it is to be knowne, that notwithstanding that Exchange bee taken betweene two men or women sole, of of two acres of land by deed, and in the habendum of the same deed it is rented that every one shall have the said acre put in exchange with divers other acres to have in excambium prædict, which were not recited in the premisses of the deed. These words shall not alter or make void the exchange, recited and rehearsed in the premisses of the deed. See diverse other cases concerning this matter in the chapter of deeds, mutatis mutandis.

252. And it is to bee knowne, that every exchange ought to bee made by the word (Excambium) or by another word of the same effect, as by the word permutatio, &c. And therefore first something shall be said thereof. Then what things may be taken in exchange, and then what estates the parties to the exchange ought to have, and lastly how the estates of the parties unto the Exchanges ought to be executed, &c.

253. and it is to know, that it hath beene said, that in every exchange the word (excambium) ought to be, &c. aswell as in every gift in Frankmariage, these words (Frankmariage) ought to bee, and aswell as in every gift in frankalmaigne; the word (Frankalmaign) ought to be. And therefore if I give unto J. S. one Acre of land by deed indented, without any word of exchange, and for the same acre he giveth unto mee another acre of land, in such manner and forme, as I have made the gift unto him and either deliver his deed unto the other as his deed, if liverie of seisin bee not made the freehold shall not passe, notwithstanding that either hath given his acre unto the other by the Indenture. To have and to hold unto him and his heires. But if either of them enter into the others acre by force of the deed delivered unto them, they are tenants at will.

254. And if exchange be made by word betwixt two men in fee of two acres of land which are in one countie, and before their entry by force of the exchang indentures are made between them of the same acres in Fee, but no word of exchange is expressed in the Indentures, and no Liverie of seisin is made of the Land; but either deliver to other the Indentures as his deed and either enter into the others land, contained in the Indenture, Now either of them holdeth the land at the will of the other, and shall not

M. 41. E. 3. 10. T. 32. E. 3. 1.

take the land by force of the Exchange, for the Indenture doth conclude them so to claime the land &c. But if Liverie of seisin had bene made unto either of them according to the purport of the indentures, then the Indentures shall take effect as Feoffments, &c.

255. And it is said. If Exchange bee made in fee of lands in one Comitie betwixt two men by word, and before their entry by force of the exchange either of them deliver seisin of the land unto the other it takes effect according to the livery of seisin, and not as an Exchange, tamen quære. For where either enters into the others land to take liverie of seisin, they are presently seised by force of the exchange, for the entry of either of them was lawfull in the others land, which was exchanged by force of the exchange, so that before liverie of seisin to them made, they were seised in fee by force of the exchange, and a man cannot take liverie of seisin of Land whereof hee himselfe is seised, &c. But if there were only a speech betwixt them of Exchange, but the exchange was not made, then it shall bee otherwise, &c.

256. And if speech bee betwixt two to make exchange of certaine land, and either of them levie a fyne unto other of the same land, of which the speech was without any word of exchange in the fyne, it doth not take effect as an exchange, because there wanteth the word of exchange.

chang. But it is said it is not used to have words of Exchange in a Fyne, &c.

257. And it is to know, That if any man will exchange Land or other things by Fyne, It behoveth them to have two Writs of Covenant, viz. one writ of one Land, and another writ of the other land, &c. And it is to know, That if two Parsons of a Church exchange their Benefices, by the word permutatio, and either of them resigne his Benefice into the hands of the Bishop, to the same purpose, And the patrons present them accordingly, and the presentments make mention per viam permutationis, this is a good exchange, if either of them bee inducted in ting the other, &c.

258. Now is to shew, Of what things exchanges may be. And as to that is to know, that exchange may be of chattels personals, for chattels personals, and so it may be made of chattels reals for chattels reals, and of freehold for freehold, and of inheritance for inheritance, &c. And therfore if exchang be made between J. S and T. B. so that T. B. giveth to J. S his gown in exchange for the horse of J. S. & J. S giveth his horse in exchange unto T. B. for his Gowne &c. it is a good exchange, And so shall it be of other chattels personals, mutatis mutandis. And in the same manner shall it be of Chattels reals, and freehold, and inheritance, mutatis mutandis, &c.

259. And if Lord and Tenant be, by

by Fealtie only, or by homage and Fealtie, and exchange bee made betweene the Lord, and a ſtranger by deed indented, ſo that the Lord grants his ſeignorie in exchange unto the ſtranger for one acre of land of the ſtrangers, &c. and the ſtranger giveth the ſame acre unto the Lord in exchange for his ſeignory, and the tenant attorne, and the Lord enter into the acre ſo exchanged &c. it is a good exchang notwithſtanding that the homage and Fealtie be not valuable, ſo as they ſhall not be Aſſets upon a lineall warranted deſcended upon the iſſue in taile, &c. For a man may buy ſuch a ſeignorie for money. And by the ſame reaſon, a man may giue an acre of Land in exchange for ſuch ſeignorie, &c. and a ſeignorie by diuine ſervice may be exchanged for land, tenement, rent, or ſervice, &c.

260. But a ſeignorie in Frankalmaign cannot be exchanged with any perſons, but with the tenant in Franka Inmaign, becauſe that the exchange of a ſeignorie in Frankalmaign with a ſtranger proveth the Seignorie to be in eſſe, and no perſon ſhall have a Seignorie in Frankalmaign, if not the ſcoffer or his heires. &c.

261. But quære, if lord and tenant bee by Fealtie and twelve pence, and the lord exchange his ſeignory with the tenant for the tenancy, and è converſo, by deed indented, if this exchange be good or not, for ſome ſay, it is not good, becauſe that im-

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mediately upon deliverie of the deed &c. the Seignorie is extinguished in the tenancy, so as the Lord shall have the tenancy, and the tenant shall have nothing for the tenancy, and so &c. This argument may be answered in this manner, that is to say, To say, that the Lord granted his seignorie unto the tenant by deed upon condition, and in the same case if the condition be broken, hee shall have his seignorie back againe. And tenant for life may grant his estate by deed indented upon condition unto his Lessor, &c. In the same manner is it of a Seignorie granted in exchange: For every exchange comprehends in it a condition, &c. And so shall it bee of an exchange by deed indented of Land, and rent issuing out of the same land, &c. And diverse other Arguments may bee made in this matter, Ideo quære, &c.

262. But if a Manour or Land bee given unto mee, and I in Exchange for the same Manour or Land grant unto my Donor a Rent, &c. issuing out of the same manour or Land, &c. It is not available to take any effect as an exchange, &c. 7. E. 4. 21.

263. But if I grant a rent charge issuing out of my land unto J. S. in Exchange for one Acre of his owne Land, &c it is a good exchange, and I may exchange rent which I have issuing out of the Land of J. S. with T. R. for his owne land, Tenement, 30. E. 1. Exch. 15.

rent

Rent or common, &c. And it is good with Attornment, &c. And yet if any of the Exchangers dye before attornment it is not good.

264. And if three acres of land with an Advowson unto them appendant are given in Exchange by L. R. unto J. S. for a Chamber assigned by the said J. S. at the Election of the same L. B And J. S. assigns unto L. B. two chambers, viz an upper and a lower, and L. B. M. 9. E. 4. 38. choose to have the upper chamber, and enter therein, and J. S. enter into the land, &c. It is a good exchange, and yet it was not certain at the beginning, &c.

265. So shall it be, If I give my Manour of Dale in Exchange unto L. B. for his Manour of Dale, or for his Manour of Dewre, &c. And if exchange be made betwixt me and L. B. viz. That after the Feast of Christmas L. B. shall have my Manour of Dale in exchange for his manour of Dale, &c. it is a good exchange, and either of them may enter into the others manour after the Feast of Christmas, &c. But if I give unto L. B. my Manour of Dale in exchange for the Manour of Dale which he shall have after the death of his father by dissent as heir unto his father, and his father bee living at the time of the exchang it is a void exchange.

266. But if a man release his Flowers, which he hath yearly to take in a wood, &c. and deliver the release in exchange for land given unto him in Exchange

change for the release, it is a good exchange, and yet the release tooke effect by way of extinguishment, of the Estovers. But it is as good advantage and profit to the Tenant to be discharged of them, as if so many estovers had beene granted unto him.

267. And so shall it be, If I have a rent issuing out of the land of I. S. and I grant or release the same rent unto I. S. in exchange for other land, Tenement, rent, or common, &c. Or to have a way over his lands, &c. Yet it is said by some That in every Exchange there ought to be a transmutation of the possession of the one Exchanger into the other Exchanger, otherwise the Exchange is not good. But the same is not true as appeareth by the cases aforesaid.

268. And, It hath beene held, That if I be seised of land to which I. S hath right of action, and I give unto him Tenements in exchange for a release of his right, that it is a good exchange because I may purchase such release for my money, and by the same reason I may give lands or tenements in exchange for the same release, and also I have equall right by the Release unto the estate which I give, and it shall be a good advantage unto me to have it by extinguishment, as otherwise. &c. 16.E.3. Exch. 2. M.9.E.3. 56.

269. And the same law is, of exchange of land and advowson by deed indented for a release unto a usurper of his right

unto another advowsen, when his incumbent hath bene in the possession of the Church by 6. moneths, &c. Yet against that, It may bee said, That the Exchange in the first of these two latter cases is not good because by such Release, &c. the estate of the Release is not altered, and by such release he doth not take more issues and profits of it, &c. And against that it may be said, That now he hath this Land without encombrance of Action, and so it is more profitable unto him, and of more value to be sold, &c. Ideo Quære certitudinem inde, &c. And

31. E. 3. Assets 5. a Rent descended unto the issue in tayle by way of extinguishment, shall be said to be Assetts, &c.

Grants. 29. 270. And the reason, if Father Tenant intayle, and sonne be, And the Father is seised of a Rent charge issuing out of the Land of the Sonne in Fee, and discontinueth the Land entayled with warrantie. Now this Rent descended unto the issue by way of extinguishment, shall bee Assetts for the value thereof, because it is valueable, and as great advantage unto him to have the same extinguished; as to have so much Rent in possession, and to be discharged of that Rent; But a right of Sure or of action, or a use of Lands or Tenements, &c. descended unto the issue in tayle shall not be Assetts, &c. because that such Assetts are not taken by the equitie of the Statute of Gloucester cap. 3. See the Stat. &c. But exchanges

are

are at the Common Law, and therefore common reason shall serve for them.

271. And if disseisor, and disseissée bée, & ẏ disseissée releas his right unto the disseisor in exchange for an other acre of land &c. it is a good exchange. Causa patet. But if the dissesée had granted his Right unto a stranger who had nothing in the land exchanged for one Acre of land, this exchange had not been good, for that the stranger took not by the Grant, &c. 3. E. 4. 20 Exchange 4. P. 7. h. 4. 43.

272. And if the heire enter after ẏ death of his Father and assign Dower unto his Mother in exchange for another acre of land, it is a voyd exchange, because ẏ the Tenant in dower is not in ẏ Land which she hath for her dower by the heire, but by her husband, &c.

273. And if disseisor & dissesée be of one acre of land & ẏ disseisor exchange ẏ same acre of land with ẏ dissesée for another acre of land, &c. this exchange is not good, if it be not by deed indented, or by Fine, &c.

274. And it is to be knowne, then an exchange is good notwithstanding that the things exchanged be not of equall value, as Mr. Littleton hath well shewed in his first book in the cha. of Tenant for yeares, &c. And it is to know, That in this book are diuers cases expressed & determined against ẏ opinion of some men; *Sed scrutatis Libris non pontis, & fide non data unius hominis vel duorum hominum dictis, vel uni libro, &c. Et tunc authoritatum sufficientium a huic libello concordantium compertum habebit.*

275. Now

275. Now is to shew, what estates the parties to Exchanges ought to have. And as to that know, That the estate of either partie unto the exchange ought to bee equall as Master Littleton hath well declared; And therefore, If an estate for life be expressed unto one partie upon the exchange, and no estate be expressed unto the other partie, &c. the exchange is not good; for notwithstanding that both parties to the exchange have an estate of freehold, yet the estate for the terme of another mans life is not so high an estate of freehold as the estate of him, who hath an estate for the term of his owne life, &c.

T. 38. E. 3. 25.
T. 4. E. 4. 22.

276. But if Lessee for life bee of one acre of land, and he giveth one other acre of land unto his Lessor in fee taile for a release of all his right in the acre which he holdeth for terme of his life. To have and to hold the same acre unto him and the heires of his bodie begotten this is a good Exchange.

277. Ba. If I. S. and T. K. are inseised of one acre of Land. To have and to hold the same acre to them, and unto the heires of T. K. and C. D. give unto them another acre of land, to them in fee in exchange for the same acre of which they are inseised as aforesaid. It is said, that this is no good exchange but for the moitie which appertaineth unto T. K. because that he hath fee in the moitie of the acre whereof he was enseised, exem-

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ted to such intent, or to put and vest the same in another person by alienation, that is to say, by feoffment, exchange &c. and as unto the moitie which appertaineth unto I. S. the exchange is not good, because he departs but with the freehold, &c. and he is to take a fee simple in the other land, &c. But against that it may be said, that the exchange is good for all, because that the fee-simple of the whole acre of I. S. and T. K. was in T. K. &c. and then when I. S. and T. K. joyne in exchange of the same acre, the whole acre with the fee shall passe to C. D. so that he hath fee simple executed in the same acre, and I. S. and T. K. have like estate executed in the acre of land, which C. D. gave in exchange unto them, as they had in the other land, and so the estates of the parties in the exchange are equall, &c. Ideo quære.

278. And also it may be said, That in the same case the exchange is void in all, for it is argued before, That the exchange is void for the moitie unto the said I. S. and when it is void in part it is void in all, &c. As to that it may be said, That that reason is to take effect, where the exchange is made of things which are entire &c. T. 9, E. 4. 22, 2, E. 2, Cui in vita 17

279. If a man seised of lands in fee in the right of his wife, give the same lands in exchange for other lands in fee, &c. this exchange is good untill it be defeated by the wife or her heire, &c. So shall

shall it be if the husband and wife ioyne in an exchange, &c. And if Lessee for yeares of land and his lessor ioyne in exchange of the lands leased in fee unto a stranger for other lands in fee to each partie, it seemeth to some that this exchange is void unto the Lessee, and good for the whole land unto the lessor, for the Lessee for yeares may surrender his land unto his lessor of the land by word, Then when the parties, viz. the Lessor and the Lessee ioyne in exchange in fee, it shall be said the surrender of the Lessee to his lessor, as well as if lessee for yeares of land, and his lessor ioyne in a feoffment of the same land leased unto a stranger, &c. And so &c. tamen quære de certitudinem.

280. If disseisor and disseisee be of one acre of Land, and they ioyne in exchange of the same acre of Land in fee unto a stranger for another acre of land in fee and the exchange is made of the land, the exchange is void to the disseisee & good to the disseisor for the whole land, For the disseisee at the time of the exchange had nothing in the land but a right, the which he could not give or grant unto a stranger, but may vest it in the person of the tenant of ℔ free-hold of the same lands diverse wayes, by Extinguishment &c. And at the time of the exchange, hee to whom the exchange was made of the Land, had nothing in the Land, &c.

281. If two ioynttenants are in fee of one acre of Land, and they exchange the same

lane acre of land in fée with a ſtranger for another acre of land, to habe and to hold one moitie of the ſame acre unto one ioynttenant in fée, and to habe and to hold the other moitie of the ſame acre unto the other ioynttenant in fée, this is a good exchange, &c. So ſhall it be, if two tenants in common of land ioyn in exchange with a ſtranger for another acre, to habe and to hold the ſame acre unto them ioyntly, &c.

282. And if the diſſeiſor of one acre of land enfeoffe a ſtranger of the ſame acre of land, and the feoffée give unto the diſſeiſee another acre of land in fée in exchange for a releaſe of all his right, in the acre of land whereof he was diſſeiſed, this is a good exchange, for notwithſtanding that the letres of the feoffée are not expreſſed in the exchange, the right of the diſſeiſée is extinct in the feoffée by force of the releaſe according to his poſſeſſion, which he had at the time of the releaſe made unto him, the which was in fée, and ſo the exchange is good.

283. But if lord and tenant be by fealty and 12. pence, of one acre of land, and the tenant grant another acre of land unto ỹ Lord in exchange in taile, for a releaſe of all his right in the tenancy, &c. it is no good exchange, becauſe that by the releaſe the fée ſimple of the Lord is determined, and the Lord ſhall not habe but an eſtate in taile with land given unto him in exchange, for the releaſe of his right, &c. So ſhall it be of all the like caſes, &c.

284.

284. Now is to shew in what time the estates of exchanges ought to be executed. And as to that know, That the estates of exchanges ought to be executed in the lives of the exchangers, otherwise their heires shall avoid them, if not that it be in speciall cases.

285. And therefore, if an exchange of lands be betwixt two, and one enter according to the exchange, and the other exchanger dye before any entry made by him, he who entred shall not be the first person who shall defeate the exchange. But if the heire of the exchanger who entred not, enter into the land into which the other hath entred by force of the exchange, and anf. him as he may, that is viz, he who is put out, may enter into the land which he gave in exchange.

M,9.E,4, 39. P,45 E,3 Esch.10 acc.

286. And it is to be knowne, That at all times during the lives of the parties unto the exchange, either of them may enter according to the exchange, at what time he please, if the possession bee not devested out of them, by an elder title, &c. as by an entry for a condition broken; or by an entry by the disseisee or his heirs, if those who made the exchange, have, or any of them hath the land so given in exchange by disseisin, &c. Or by recoverie upon an elder title, &c. Or by alienation in Mortmaine, made before the exchange made; Or by any other lawfull cause, &c.

M,15,E,4 1.

287. And some have said, That in some

some case, the partie unto the exchange shall enter, if the possession of the land be devested out of the other partyunto the Exchange, notwithstanding that it be not devested out of him by an ancienter title: as put case. An exchange be made of land in fee between an Abbot and a Lay man, and the Abbot enter into the land of the Lay man, by force of the exchange, and the layman doth not enter into the land, but in exchange by the Abbot, and the Lord of whom the land is holden, in which the Abbot hath entred by force of the exchang enter into the same land within the yeare and the day after the exchange, as into land aliened in mortmaine; In this case they say, that the Abbot shall retaine the land which he put in exchange in his possession; and the other partie to the exchange shall not have his owne land againe which he himselfe put in exchange unto the Abbot, because that the possession thereof is out of him in the person of the Abbot by his owne act, and the same acre the Abbot cannot retaine in his possession against the lord of whom it was holden. &c. But against that it may bee said, That for as much as the Abbot hath executed the exchange hee shall for no cause disagree unto the same, &c. if not that it be in very speciall cases. And every exchange is conditionall, Ideo quære, &c.

288. And it is to know, that if two parsons of two severall Churches, exchange their

their Benefices, and resigne them into
M.45.E.3 the hands of the Ordinarie to the same
Exch,10. purpose, And the Patrons make presentments accordingly, and one of the parsons is admitted, instituted, and inducted, and the other Parson is admitts dand instituted, but dyeth before induction, the other Parson shall not keepe the Benefice in which he is inducted, for the exchange is not perfected because it is not executed, &c.

289. And if the Reversion of one acre of land be exchanged for another acre, &c. and the exchanger of the reversion die before attornment made unto him, his heire may enter upon the other exchanger, and put him out of the land put in exchange by this father, &c.

290. But if a man seised of land in fee in
16.E.4 8. the right of his wife, and he and his wife exchange those lands for other lands in fee, and the exchange is executed, and the husband dye, and the wife enter into the lands taken in exchange, now shee shall defeate the exchange &c.

291. But in the same case, if the husband alone had made the exchange, the wife cannot avoid it, notwithstanding his entry in the same lands, after the death of her husband, for then by her entry he is not seised of the lands by force of the exchange, because that he is not party thereunto, and she cannot be privie thereunto, &c.

292. If an Exchange be had betwixt two men of lands, and before their entry by force of the Exchange they are disseised of the Land put in exchange, and the disseisor dyeth the cui seised, and the parties unto the exchange enter into the lands put in exchange accordingly, and put out the heire of the disseisor, this entry cannot be said an execution of the exchange, because that their entry was taken away by the dissent. &c. But if the disseisees had recovered the same Lands against the heire of the disseisor by severall Writs of Entre en le per, &c. and had them in execution, then they might enter according to the exchange and this entry shall be a good execution of the exchange, &c.

293. And if a man be seised of land in the right of his wife in fee, and thereof enfeoffe a stranger, and take backe an estate unto him and his wife, and unto a third person in fee, and they three joyne in exchange of the same lands in fee, for other lands unto a stranger in fee, and the exchange be executed, and the husband dy and the wife doth occupie the Land taken in Exchange with the third person; By this occupation of the Land she shall bee excluded to have any part of the other land which was given in exchange for this Land, &c. 8. E. 2. ff. Cau. Cui in vita 28.

294. And if Tenant in taile be of one acre of Land, and he exchange the same acre for another acre with a stranger in fee,

fee, and the exchange is executed, and the tenant in taile dye, and his issue enter into the land taken in exchange, by his father, he hath perfected the exchange during his life; &c,

T.16.E.3 exch.2. M.4.E.2. exch.3. H.12.h.4 13.

295. And if an infant exchange land, &c, and occupie the land taken in exchange, when hee commeth of full age, the exchange is executed &c. And it hath beene said, that if a man be seised of a Mannour, viz. of one moitie in taile, and of the other moitie in fee, and giveth this Mannour in exchange for another Mannour in fee, and the exchange is executed, and the Tenant in taile dye, and the issue in taile (disagreeing unto the exchange) enter into the whole Mannour put in exchange by his father, the exchange is void as for the whole, because the exchange was made of one intire thing for an other intire thing, tamen quære. For in the same case, if the exchange had beene impleaded of parcell of the same manour whereof one moity was in taile, &c. and had vouched; and the vouchee entred into the warranty, and loose &c. he shall not recover in value, but for the portion which is lost, &c.

296. And if a man be seised of two acres in fee taile, and of another acre in fee, and exchange these three acres with a stranger for another acre in fee, and the exchange is executed, and the tenant in taile dye, and the issue in tail (disagreeing

ing unto the Exchange,) enter into all the three acres put in exchange by his father, his entry is lawfull in all the tailed land, and for that land the exchange is avoided, &c. But into the third acre of which his father was seised in fee his entrie is not lawfull, and for that acre the exchange shall stand: So an exchange is avoided in part, and shall stand in part, &c. Quære if the other exchanger can enter into any parcell of the land by him put in exchange, because there is not care of the value.

297. And if I. S. bee seised of white acre in fee, and he exchange the same and blacke acre wherein hee hath nothing with a stranger, for another acre in fee &c. the exchange is void as unto blacke acre: But notwithstanding it is said, I. S. shall have the whole land which was put in exchange by the stranger; for they say, there is no care of the value of the land, & quod verum est, &c. tamen quære for it seemeth it is not within the same reason, &c.

298. And if a man of unsound memory being seised of land in fee, exchange the same land with a stranger for another acre of land in fee, and the exchange is executed, and he of unsound memorie dye, and his heire enter into the land taken in exchange, by his father, now he shall not avoid this exchange, &c.

299. And it is to be knowne, That in foure ſpeciall caſe an exchange may be executed in ỹ parties to ỹ exchang, & may be avoided by ỹ ſame partys. As put caſe. A man graunteth unto me common for 6. beaſts in his meadow &c. in exchange for away over my land for to carry the hay growing upon the ſame land unto his houſe in Dale. And I grant the ſame way unto him, in exchange for the common &c. And the exchange ought to be by deed indented, &c. And I uſe the common by force of the exchange, and the other party to the exchange ſhall uſe the way according to the exchange; and afterwards he will not ſuffer me to uſe my Common, then I may not ſuffer him to uſe the way, and the reaſon is becauſe they are yearely executorie, &c. The ſame reaſon may be made, if a rent be exchanged for a rent &c. Ideo quære.

9.E.4. 23.

CHA.

Chap. V.

Dower.

NOw are we to speake of Dower. And as unto that know. That as M. Littleton hath well shewed and set forth in his first booke, there are 5. manner of Dowers, which appeare in this chapter of Dowers, and many and diverse good cases concerning dower, are there put by my Lord Littleton. And also there are so many good and necessary cases concerning Dower put upon the writs of Dower, in natura brevium with the additions, that a man can hardly speake any thing more concerning dower beyond what is shewed and said in the same booke. And yet notwithstanding that, some thing shall by the grace of God be said here concerning Dower.

301. And as unto dower at the common law, it is to know, Where husband and wife are, and the husband is seised of such estate during the mariage that the issue which by possibilitie they may have be.warne them during the marriage by possibilitie may inherit by the common law, The wife shall be endowed if the estate and possession which the husband hath be not lawfully avoided, &c. if not that it bee in speciall cases, Et cætera.

302. And therefore if Tenant in generall taile, take a wife, and enfeoff a stranger and take back an estate unto him and his wife in speciall taile, and the wife die and he marieth another wife, and hath issue and dyeth, The second wife shall not be endowed, yet the issue is remitted unto the generall taile: But the second wife shall not have dower thereof, because that her husband was not seised of such estate &c. during the mariage betweene them two, &c. M.14.E.4 30.

303. But if Lord and a woman Tenant be of one acre of Land by Fealtie and twelve pence rent, and they entermarry, and the husband dye, the wife shall be endowed of the third part of the rent by way of retainer, And yet the husband was not seised thereof in deed during the mariage celebrated betwixt them, for by the mariage betwixt them, the seignorie was in suspence, and so continued during the ma-

1.E.3.6.

riage

riage, as to bring an action, so as it did amount unto a possession in Law; &c.

304. And of Seisin and possession in Law, the Wife shall bee endower &c. And if a man seised of Land, Tenement or Rent, &c. in Fee, take a wife, and during the same marriage be marieth another wife, and the husband dye, leaving both Wives, the latter Wife shall not have Dower, because the marriage betwixt them was void, et cætera.

305. And if a Woman take a Husband, and leaving the same Husband, she marieth another husband, who is seised of Land in fee, and the second Husband dye, shee shall not have Dower of his Land, Causa patet. But if Alice at Style make a contract of Matrimony with C. D. and before the marriage solemnized betwixt them, shee marieth with J. B. who is seised of land in fee, et cætera. And J. B. dye shee shall have Dower as wife of J. B. if the marriage be not avoided, for it was but voidable, &c. 39.E.3.2.

306. And if a man seised of land in fee make a Contract of Patrimonie with J. D. and bee dye before the marriage solemnized betweene them, shee shall not have dower, for she never was his wife. And it hath been holden in the time of King Henry the third, That if a Wife had beene married in a

Chamber that shee should not have Dower by the common Law, but the law is contrary at this day.

307. And if a man seised of land in fee take a wife, and enter into religion, and is professed, his heire shall inherit presently, yet his wife shall not have dower during the naturall life of her husband, for the husband cannot be professed in religion during the marriage without the assent and agreement of his wife, and if he be so without her assent, the profession is void, &c.

10. h. 3. Dower. 200.

308. And it is to know, That if Tenant in generall taile take a wife, and hath issue by the same wife, and the husband be attainted of felony, and dye, the wife shall not be endowed; and yet his issue which he hath shall inherit, but hee shall not inherit by the common law, but by the statute of Westminster, 2. Cap. 1.

309. And it is to know that if father and son bee, and the father is seised in fee of one acre of land, and exchange the same acre for another acre with a stranger in fee, and the exchange is executed, and the father dye, and the sonne take a wife and enter into the acre, taking in exchange by his father, and the partie to the exchange who surviveth is impleaded of the acre taken in exchange by him, &c. and vouch to warranty the son, who entreth into the warranty and looseth &c. and the Demandant hath Execution

against the tenant, and the tenant over in value against the vouchee of the acre, which the Tenant put in exchange unto the father of the vouchee, &c. and the vouchee dyeth, his wife shall not have dower of this acre put in execution because that the recoverie in value shall have relation unto the time of the exchange made, which was made before the title of the wife to have dower, and so the possession of the husband is a bar by an elder title before the marriage. 4. E. 3. 32. T. 15 E 3 Dow. 128

310. And If two Men be coparceners of Land in Gavelkind, and they make partition, and one of them taketh a wife, and the other is impleaded of his part, and prayeth in aide of his coparcener, and he repne to him in aide, and the demandant recover and the tenant hath pro rata, of that which remaineth in the possession of his coparcener, and the coparcener of whom the aide was prayed dyeth: his wife shall not have Dower of that which the other coparcener had pro rata, because that the title of the coparcener who had pro rata, shall have relation unto the time of the death of their Ancestour, &c.

311. And if a man by deed indented enfeoffe another of Land upon condition to be performed on the part of the Feoffee, and the feoffee take a wife, and the Feoffee performe the condition, and the Feoffee dye, his wife shall not have dower of this Land, &c.

312.

312. And if I enfeoffe a man of land upon condition that hee shall enfeoffe I. S. of the same land before the feast of Easter next ensuing, and the Feoffee take a wife, &c. not tendring any Feoffment unto I. S. before the same feast, and I enter, and the Feoffee dyeth, his wife shal not have Dower against me because that my entry shall have relation unto the time of the Feoffment, &c.

313. But if Lord and villeyne be, and the villeyne take a wife, and purchaseth land in Fee, and presently after the possession executed to the villeyne by force of the purchase the Lord enter, and the villeyne dyeth, his wife shall have Dower against the Lord, because that his Tytle doth not begin but by his entrie, and the tytle of the Wife to have Dower was before the same, &c.

314. But if Lord, and Neife in grosse be, and they entermary, and the Lord is seised of land in Fee and the LORD dye, shee shall not have Dower against the heire of the Lord because shee is his Neife; But if the Lord had enfeoffed a stranger of the same land, shee shall have Dower against the Feoffee, because shee is not his Neife. But otherwise is it, If she had beene a Neife Regardant to the land of which the Feoffment was made &c

315. And it is to know, That it hath bin holden in diverse bookes, as in 2. or 4. bookes. That if there bee Grandfather, Father

Father and sonne and the Grandfather is seised of one acre of land in fee and taketh a wife, and the Father taketh a wife, and the Grandfather dyeth, and the Father entreth and dyeth seised, and the son doth enter and endoweth his Grandmother, and the Grandmother dye the wife of the Father shall not bee endowed of the land whereof this Grandmother was endowed because that a woman shall not be endowed of a Reversio expectant upon a Free-hold, and the possession of the Free-hold by the endowment is vested in the Grandmother by a Title, before the title of the Father unto the Free-hold; But if the Grandfather had enfeoffed the Father of the same land during the Mariage betwixt the Father and his wife, In that case, after the death of the Grandmother, the wife of the Father should have Dower of the same Land of which the Grandmother was endowed, because the possession of the Father which gave tytle to his wife to have Dower was in the life of the Grandfather at which time the Grandmother could not demand Dower, so that by the endowment of the Grandmother, the possession of the Father is not avoided, for the Grandmother had right unto the possession but from the time of the death of the Grandfather, &c.

316. And

316. And if there be grand father, fa-
8 E.2. It. Cane. 25. 393. ther and sonne, and the Grandfather bee seised of one acre of Land in fee, and taketh a wife, and the father take a wife, and the Grandfather dyeth, and the sonne entreth and endoweth his mother against whom the grandmother bringeth a writ of dower, and recovereth and hath execution. And the grandmother dyeth in the case the mother may enter into the land, recovered by the Grandmother against her, and retaine the same land against the donee, because she was endowed thereof by him. And so shall it bee if the mother had recovered against him in a writ of dower.

317. And it is to know, That if a man be seised of Land in fee, and giveth the same land in tail unto a stranger, reserving to him and his heires twelve pence rent,
M.44. E. 21. and for default of payment, a reentry &c. And the donor taketh a wife and dyeth, and the heire of the donor entreth into the land for the condition broken, The wife of the donor shall not bee endowed of the rent, nor of the land, &c. And the wife of the donee shall not be endowed, and yet if donee of land in generall tail take a wife,
M.46. E. 3.24. and dyeth without issue, and the donor dyeth enter, the wife of the donee shall have dower, and yet the estate taile which made her title is determined, &c.

318. And it is to know, That sometimes the wife, may choose to bee endowed of one land, or of other land, &c. or

of

of seignorie, or of a Tennancie, &c. Or of land, or of a rent charge, or of a rent seek issuing thereout, &c, but in such cases she shall not have dower of both, if not that it be in speciall Cases, &c.

319. And therefore if a man seised of one acre of land in fee, take a wife and exchange the same acre of land with a stranger, for another acre of land, and the exchange is executed, and the husb and dyeth. Now it is at the Libertie of the wife to have dower of the acre, which the husband put in exchange, or of the acre which the husband took in exchange: But she shall not have dower of both acres. M.13.E.3 Do.130. M.13.h.3 Dow.93.

320. And if there bee Lord and Tenant by fealtie and twelve pence rent, & the Lord taketh a wife & purchaseth the Tenancy in fee and dyeth, In this case it shal lbe at the libertie of the wife to bee endowed of the Seignorie, or of the Tenancy, &c. So shall it be, if a man seised of a rent charge in fee, take a wife, and purchase the land in fee wherout the rent is issuing, and dyeth. It shal be at the liberty of the wife to be endowed of the land, or of the rent &c.

321. But if there be Lord and Tenant by fealtie and the Lord taketh a wife, and the tenancy escheate unto the Lord, and he enter and dye, In this case it shall not be at the libertie of the wife, to have dower of the seignorie or of the tenancy. But she shall be forced to take her dower of the tenancy, and the reason is, be

because that the seignorie is determined during the covertvre, by act of law, and it is no disadvantage unto the wife to be endowed of the tenancy, for if she be put out of possession of part thereof by a more ancient title, the seignorie shall be revived for so much, and if all the tenancy bee recovered by a more ancient title, then the seignorie shall be revived in all, &c. and then she may have dower of the seignorie, &c.

H. 22. E. 3 dow. 131.

322. If there be Lord, Seine, and tenant by fealtie and 12 pence rent, and the Seine taketh a wife, and releaseth all his right unto the tenant, and dyeth, the wife shall be endowed of the meerealtie, so shall it be in such case, if the Tenant finding the meine, &c. And if the disseisor of one acre of land enfeoff a stranger of the same acre with warranty, and the feoffee taketh a wife, and the disseisee bringeth a writ of entre en le per, against the Feoffee, and he vouch to warranty his Feoffor, &c. and each recovereth against the other, and have execution, and the feoffee dieth, the wife of the Feoffee shall have dower of the land which her husband recovered in value, and not of the land which he lost, causa patet.

323. If there bee Lord and Tenant by fealtie and twelve pence rent, and the Lord take a wife and dyeth, and his wife is endowed of the third part of the rent and the Tenant dyeth without heire, so as

as the tenancy doth eschеate, In this case the wife shall not bee endowed of the tenancy, notwithstanding that it come in lieu of the seignorie, because it was not in the possession and seisin of the husband, But she shall retaine the rent which was assigned unto her in dower, as a rent Service, and shall distraine of common right, &c.

324. And it is to know, That some persons hold opinion that in some speciall case. A wife shall bee endowed of land, and also, of rent issuing out of the same land. And therefore they say, that if a man be seised of foure acres of land in fee, and taketh a wife, and enfeoffeth a stranger thereof by deed indented, and rendring unto him and his heires three shillings rent with clause of distres and dyeth, and the feoffee endoweth the wife of the Feoffor of the third part of the land, the land which is assigned unto her in dower is discharged of this rent, and the whole rent is issuing out of the residue, of the land: And the reason is because that the wife shall be endowed of the best possession which her husband hath during the coverture, And the husband was seised of this Land during the coverture discharged of the rent, and so, &c. And this rent is a Rent Charge, and doth not come in lieu of the Land. And the Husband had an estate in the Rent during the Coverture, &c.

325.

325. If a man seised of three acres of land in fee, taketh a wife and dyeth, and a stranger abate in one of the acres, and is seised in fee of two other acres and marrieth the same woman, and enfeoffeth a stranger by deed Indented of the three acres, yelding to him and his heire three shillings rent with clause of distresse and dyeth, now all the three acres are charged with the rent. But if the heire of him after whose death the abatement was, recover the acre of land in which the abatement was, and assigne the same acre unto the wife for her Dower; yet the wife may have dower of the rent, for this acre is as if it were never charged, and the whole rent is issuing out of the two other acres, &c.

326. And if a man seised of three acres take a wife, and enfeoffeth a stranger by deed indented of two of the three acres, rendring two shillings rent, unto him and his heires, with clause of distresse, and the wife is endowed of the third acre which remaineth as allowance of the other acres, yet they say, that shee shall have dower of the rent which is issuing out of the other two acres, tamen quære. For it is against the opinion of diverse men, and against conscience, &c.

f. E. 1. Do. 143. P. 11, E. 3. 14.

327. And it is to know, That if a man grant unto a rent charge in fee upon condition, that if J dye, my heire within age, that the rent shall cease dur-

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ring the Manage of my heire because it is a condition indeed annexed unto her estate at the beginning of which estate the wife claimeth dower, &c.

328. And know, That if a man be seised of 20. acres of land in Fee, and taketh a wife and enfeoffeth a stranger of the land; And the Feoffee build thereupon a Castle or a Mansion house, or other buildings, or otherwise doth improve it, so as it is worth more by the yeare then it was in the possession of the Husband; The wife shall not have dower but according to the value it was at in the time of the husband. And yet if a disseisor build upon land which he hath by disseisin, and the disseisee enter, he shall have the building, &c. And so shall it be, if the Feoffee upon condition broken, &c. ỳ difference is apparent. M. 17. h. 3 Dow. 192.

329. But if a man seised of land in Fee upon which there is building, that that by reason thereof is worth 4^s. more by the yeare, and he taketh a wife, and enfeoffeth a stranger, and doth down the building, and the Feoffee dyeth, The wife shall have dower according to the value of the land as it was at the time of the death of the Husband, and hath remedy for the taking away of the building before the death of the Husband, notwithstanding that the building were upon the same land in the possession of the Husband during the coverture, for the wife hath not right to have dower before the death of the Husband, &c. Tamen quære, of this case.

330. And it is to know. If a man be seised of three manors in fee, and take a wife, and granteth a rent charge issuing out of all the three manours, and dyeth, and the wife taketh one Manour by assignment of the heire for her dower, in allowance of all the 3 manors, now 2. parts of this Manor doth remain charged to the distresse of the Grantee, notwithstanding that the grant of the rent charge was made during the mariage, and the reason is, because that as to the two parts she had taken her dower against common right, for according to common right, she ought to have the third part of every Manour for her dower: But in the same case, if shee had recovered her dower, and such assignment had been made unto her by the Sheriff, she should have holden the same discharged. Causa patet.

331. But if a man be seised of three advowsons of 3. several Churches, & taketh a wife, & granteth unto a stranger that he shall present to the next avoidance of the 3. Churches wch shall first become void, & the grantor dyeth, & his wife bringeth a writ of dower against the heire, before any church become void, & recovereth. And the Sheriff doth assign unto her the advowson of one Church for her dower in allowance of the other Churches, wch advowson assigned unto her doth first become void after the grant made by the husband, & the avoidance happeth after the assignment of the dower: It seemeth unto some in this case, That

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ꝑ wife shall not have this avoidance, but ꝑ grantee shall have ꝑ same, because that she is endowed against comen right, for of right she ought to have but ꝑ third avoidance of each Advowson of each Church.

332. And notwithstanding that ꝑ assignment be made by the Sheriff, it shal not preiudice nor out ꝑ grantee of his right, because he is a stranger unto the assignment, and also he cannot otherwise take advantage of his grant but only at this avoidance, tamen quære. Not otherwise is it in case of a grant of a rent charge out of three manors, for when ꝑ assignment is made by ꝑ Sheriff of one manor in allowance of all ꝑ manors, the grantee may distrain for ꝑ whole rent in the other 2. manors, and in every part of them, & it shall not be more preiudiciall unto the heire this way than the other way, &c.

333. And it is to know, that a woman shall never bee endowed, if the Freehold and the inheritance bee not in the husband, Simul & semel during the marriage.

334. And therefore if lands bee given unto two men and unto the heires of the bodie of one of them begotten, & hee who hath fee taile take a wife and dyeth, leaving him that hath the freehold, notwithstanding ꝑ he that hath the freehold dy, the wife shall not have any dower, because the estate tail was not executed to al purposes in her husband. And yet if a stranger hath entred after his death who had ꝑ

T.11.h.7.3. Freehold. The issue of the donee shall have A Formedon en le Discend. against him, and shall alledge the Explem in his Father; and so to such intent the estate was executed in the donee, &c.

335. And if the Husband hath an estate in land, &c. by Fine upon a grant and render for life, the remainder unto I. S. bi[illegible]ion in taple, the remainder unto the right prises of the Husband, and the Fine is executed, If in this case, The Husband dye being I. S. his sonne, or any issue by him begotten, his wife shall not be endowed, notwithstanding that I. S. the son dyeth without issue after the death of the Husband leaving the wife; Causa patet. But if a lease bee made of land for yeares, the remainder unto I. S. for life, the remainder unto the right heires of I. S. And I. S. take a wife and dyeth during the terme of yeares his wife shall recover dower, But execution shall stay during the Terme of yeares.

P.48.E.3 15.

348. And if a man seised of one acre of Land unto the Husband for life, the remainder unto the husband in Fee, and the husband dye during the yeares, the wife may recover Dower: But Execution shall stay untill the Terme be determined for this measure remainder for yeares shall bee no impediment but that the Freehold was sufficiently ioyned in the Husband Simul & semel, for the wife to have Dower, &c.

337. If

337. If Land be leased unto A. and B. in the life of C. the remainder unto the right heires of A. and A. take a wife, and dyeth leaving A. B. and A dyeth leaving his wife shall be endowed, because that Cestuy que vie, dyed living A. the husband, so as the Freehold & inheritance are found in the husband during the Coverture. H. 50. E. 3

338. And if Lands are given unto I. and Alice his wife in special tayle the remainder unto ye right heires of the husband, and the wife dye before issue betwixt them, and the Husband take another wife, and dyeth, his second wife shall be endowed, &c. 4.

339. If there be Lord and Tenant by fealty and 2d. And the Tenant lease the Tenancy for life unto a Stranger, and the Lord take a wife, and the Tenant dye without heire, and afterwards the Lord dyeth before the Lesse for life, the Lords wife shall not have Dower of the Tenancie: but she shall be endowed of the Rent of the Seignorie, &c.

340. And if grantee of a rent in charge in Fee take a wife, and the Grantor lease the Land out of which the Rent is issuing unto a Stranger for life; And the Grantee of the Rent purchase the Reversion of the same Land and the Tenant for life attorne, and the grantee of the Rent dyeth leaving the Tenant for life, his wife shall be endowed of the rent, but not of the Land, because the Freehold and inheritance were not in the husband Simul & semel, during ye coverture, &c

341. Now

341. Now is to shew of what things a Woman shall be endowed: And as to that, See natura brevium, with the additions upon the writs of dower, &c. Of a common without number a woman shall not be endowed, &c. And if a man grant unto me and my heires to take pearch so many estoners in his wood in Dale as I and my heires will burne in the same Manour of Dale, and I take a wife and dye, my wife shall not have dower of the Estoners, &c.

2.E.2.do. 123.

342. But a woman shall be endowed of a Pill, as to have the third profit of the Pill, &c. because ỳ Pill cannot be severed: And a woman may have a rent allowed unto her out of a house for her dower of the house, or she may have a chamber of the same house assigned unto her, in allowance of her dower of the house. And a woman shall be endowed of a villaine in grosse, as to have the services every third day. And a woman shall be endowed of an advowson in grosse, as to have the third presentment. And a woman shall be endowed of a Waylwick, as to have the third part of the profit thereof, and in such case she shall be contributorie unto the third part of the charge of the Office. And so in the like manner she shall be endowed of affaires, mutatis mutandis, &c. And a woman shall have dower of a common in grosse which is certaine.

1.h.5.1. M.45.E.3 dow. 50. 26.Ass.42

2.h.6.11. P 13.E.2 Do.161.

343. And if a man grant unto me and my

peires to take yearely out of meadow, 3. loades of hay, and I take a wife and dye, my wife shall have dower thereof, &c. tamen quære. And a woman may be endowed of a villaine regardant, and of an advowson appendant, &c.

344. But if a man be seised of a manor in fee unto which he hath common appendant, and taketh a wife and dyeth, and two acres of land parcell of the Manour are assigned unto her for her dower in allowance of all the manour, it seemeth in this case, that she shall not have common appendant unto these two acres, for during the time they are in the possession of the woman, they are not parcell of the manour, and the common is appendant unto the Manour, tamen quære. But if the moitie of the Manour had beene assigned unto the wife for her dower by the name of the moitie of the manor, it seemeth cleer that she shall have common appendant to this moitie.

345. If there be Lord and Tenant by Fealtie and 12 d. and 12. bushels of wheate, and the Lord take a wife and dye, his wife shall have dower of the 12 d. rent, and of the 12. bushels of wheate, &c.

346. But if a man hold of me and my heires by Homage Fealtie, and to finde a chaplain to sing every Friday in the weeke yearely in the Church of S. Nicholas in Dale, in the Countie of Pembroke, at such an Altar for the prosperity of me and my friends, and for my Ancestors

stours souls, & I take a wife, & dy, my wife shall be endower of no part of this seignorie, & so shall it be in all the like cases, &c.

347. But a woman shall bee endowed of land, tenement, woods, &c. rent-charges, rent secks, &c. But if annuitie bee granted unto me and my heires, by the grantor and his heires, and I dye, my heire shall have this annuitie as he granted, as also his heires, if they have lands or tenements unto the value in fee simple discended unto them, and yet my wife shall not have dower of it, causa patet.

348. And if a man seised of one acre of land lease ẏ same for life unto a stranger reserving 2. s rent to him and his heires, and the lessor taketh a wife, and dyeth, the wife shal not be endowed of this rent and yet the heire of the lessor shall have the rent with the reversion, and it shall be assets in a formedon en le discend, brought by the same heire. &c. also the wife of the lessor shall not be endowed of a rent reserved upon a lease for yeares unto the lessor and his heires, &c. But the wife of the donor shall bee endowed of a rent reserved unto the donor and his heires upon a gift in taile of land &c.

8. H 2. Do. 184.

349. But a woman shall not be endowed of a use of land or rent, notwithstanding that it was an inheritance to her husband with the issue, which by possibility they might have betwixt them might inherit, &c. And it is to know that in many cases a woman by her own act may pre-

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wdice her selfe in her dower, as if shee commit Treason, murder, felony, for which she is attainted, &c.

350. And if a man seised of black acre in fee, taketh a wife and dyeth, and the wife accept of a leafe for life of black acre &c. she cannot demand dower of the same acre, for that shee cannot demand it against her selfe, Quære, If she accept of a leafe for yeares of black acre, whether by this acceptance she shall be excluded of her dower during the terme, for ever, or for any time, &c. M. 2. b. A. 7.

351. And if a man seised in fee of white acre, leafe the same acre unto a sole woman for forty yeares, and the Lessor entermarieth with the Lessee, and the Husband suffer the terme to continue as it was without any alienation, or other thing done therewith, and dyeth within the terme, it is said that in this case, the wife may have her dower presently, notwithstanding that the Terme doth continue, because that the time of the leafe she was entituled to dower, and notwithstanding that the terme doth continue, it shall not cast her of her dower, untill the term be determined, because if it shall be prejudiciall to any person, it should be unto the prejudice of the wife her selfe.

352. And if there be husband and wife and lands are given unto them, and unto the heires of the husband, and the husband dyeth, and the wife bringeth a Writt of Dower before any agreement, and that af-

P.1.E.3. 27. after the death of the husband, in this case she shall have dower for she shall not be compelled to take by purchase against her will, and that before the death of the husband, and the bringing of the writ of dower is a disagreement to take by purchase, which disagreement shall have relation unto the time of the purchase: Where, if the purchase had beene made unto the husband and wife for the life of the husband, the remainders unto the right heires of the husband, because that estate of the wife had determined by the death of the husband: And it hath beene said, That a disagreement cannot be unto an estate, after the estate determined.

353. But it seemeth, that in this case the wife may disagree by bringing of a Writ of Dower, notwithstanding that the estate were determined, for otherwise by such meanes the wife might be outed of her dower in every purchase made by her husband; and yet during the mariage, she is always by law under the T.43.E.3 T.19.E.3 Dovv.94 T.9.E.3. 29. gouernment of the husband in such manner and form, as that she cannot give away any manner of profit arising out of the lands without the leave of her husband; and shee cannot disagree unto the same estate during the Mariage.

354. And it is commonly taken, that if a woman run away from her husband with another man in adulterie, and be not reconciled againe unto him with his good will and her agreement, without

out the constraint of holy Church, she shall loose her dower, notwithstanding that she remaineth not with the adulterer, but if she remaine with her husband after such her running away with his agreement, and without constraint, she shall have dower, vid. West. 2. cap. 35. And if a woman be ravished, and remain with the ravisher against her will, shee shall not loose her dower. But if she willingly runne away from her husband notwithstanding that shee remaine all her life time with the Adulterer against her will, shee shall loose her dower.

355. But if a man seised of two Manours in Fee, taketh a wife, and when the husband is dwelling at one Manour, the wife goe unto the other Manour, and when she is there she liveth in adulterie, it is said that by doing so shee shall not loose her dower, because it cannot be intended a running away from her husband, when the Law cannot intend that she can dwell upon the Manour of her husband without the agreement of her husband, tamen quære. And it is to know, That a Woman may delay her selfe of her dower, by the detaining of the charters which concerne the inheritance whereof she demandeth dower from the heire, &c.

356. And therefore, If a Woman bring a Writ of dower against the heire of her husband, &c. It is a good plea M. 19. E. 4. 4.

to

H.7.E.3. Dow.101 M.3.h.7.6 to say, That the woman doth detaine from him certaine Charters and shew what charters concerning his inheritance whereof she demandeth dower, &c. but know, that such charter, or charters, ought to concerne the title which he hath by discent, &c. Otherwise it is no plea.

357. And such cause is not sufficient H.21.h.6 42. for the heire to detaine dower of more land than the Charter doth concerne, &c. M.33.h.6 41. And if in such case she doe detaine a deed which doth belong unto the heire by reason of a reuersion which descended unto him, It is a good cause for the heire to detaine her dower in the same land: but the detaining of charters concerning land of which the heire in not seized, is no cause for to detain her dower of the same land. M.22.h.6 16.

358. And therefore if a woman bring a Writ of dower against the Feoffee of her husband, and feoffee vouch the heire of the husband to warranty, if the heire enter into the warrantie and plead such matter, it is no plea, because hee is no 16.E.3. tenant of the land, and therefore the deed dowr. 47. doth not belong unto him; and for the heire who commeth into court as tenant by receipt, such matter is no plea, be- M.18.E.3 cause the deed doth belong not another 33. as well as unto him.

359. But if there be two copercenors of land, and after partition made betwixt T 7.E.2. them, their mother bringeth a Writ of Dow,150 dower against one of them, it shall bee

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a good plea for her to plead a detainer of deed by the demandant, which deed concerneth the inheritance whereof shee demandeth dower, notwithstanding that the deed doth concerne as well the inheritance of her sister, as her owne inheritance, &c. P.41.E.3 11.

360. But if a man seised of lands in fee take a wife, and he hath issue a daughter and dyeth, his wife young with child, and the daughter entreth into the land, in such case such detainer of evidences by the wife, as before is said, mutatis mutandis, shall be no cause for the daughter to detaine her dower, and the reason is, because it may be that the wife is not with child of a Sonne, &c. And know, That the detainer of a transcript of a Fyne from the heire by the wife, is not a sufficient cause to detaine her dower. And it is to know, That no person shall justifie the detaining of dower, but the heire, and then the same ought to be in manner and forme as before is said. M.6.E. 45. P.1.E.2 12.

361. And therefore it is well shewed and declared in the Annotations in natura brevium upon the writ of dower, That the Gardien in knights service cannot detaine the dower of the wife for the detaining of Charters concerning the inheritance of the heire. But the gardien in knights service may justifie the detainer of dower, for detaining of the wardship of the bodie of the heire. And if a woman take away the infant, and deliver T.11.h.3 Do.187. M.8.E.3. 47.

ver him to another man, yet it shall bee a good cause, for the Roudein to detaine her dower for the wrong done unto him, &c. if she cannot deliver the infant to him, in as good plight as he was when he was taken away, viz. unmarried, if he were unmarried at the time of the taking away.

362. But if a woman as his Mother doth bring up or nourish her child, because he alwayes remained and dwelt with her husband, and with her from the time of the death of her husband; and another man claimeth to have the wardship of the infant, because (he saith) his Father held of him by Knights service, and taketh the child out of the custodie or possession of the woman, this is no cause for the rightfull Gardien in Knights service to detaine her dower.

6.E.2.do. 144. 37.h.3. do.174.

363. If an Infant be dwelling with a stranger, and there brought up, at the time of the death of his Father, and his mother taketh him from thence, and afterwards the stranger take him againe out of her possession, so as she cannot deliver the Infant unto the Gardien in Knights service, it is a good cause for to detaine her dower, for the wrong which she did, viz. the esloigment, at what time she was lyable to his action, as unto the wardship of the bodie, and such matter may the Gardien or Knights service plead, notwithstanding that he commeth into Court by the vouchee of the infant by-

being in his ward, for the wardship of the infant by right doth not appertaine unto any person but unto him, if it be not by grant or agreement, &c.

364. And it is to know, That notwithstanding a woman will not goe unto her husband into another Countie where he dwelleth not when he is wounded, and notwithstanding that he dyeth of the same wound, she will not bring an appeale of his death, yet she shall be endowed.

365. But quære, if the Husband lye sick in his house, where he and his wife are both dwelling, and his wife will not come to him in his sickneſſe, if he shall have dower, and notwithstanding that a woman being in a frenzie, and of unsound memorie, kill her husband, or another man or woman, she shall not forfeit her dower, &c. 12. h. 3. do. 183.

366. And it is to know, That the husband by his act may prejudice the wife in her dower by his lacheſſe of entry, by his lacheſſe of suit, or by his lacheſſe of pleading, and by diters other acts as shall be said: know, that when no possession was in the husband, either in deed or in law during the marriage, there the laches of entry of the husband shall prejudice the wife of dower, if not that it be in speciall cases, and therefore if a man seised of one acre of land in fee, be desseised of the same acre, and taketh a wife and dyeth before his entry, his wife shall not have dower, 2. 1. h. 7. 17.

367.

P. 21. E. 4 60.

367. And if a man dyeth seised in fee, and a stranger doth abate in the same land, and after the abatement the heire marrieth a wife, and dyeth before his entry, his wife shall not have dower of the same land.

368. And if a man enfeoffeth a stranger upon condition on the part of the Feoffee, and the Feoffer marrieth a wife, and the condition is broken, and the Feoffer dyeth before any entry made by him, or by any other in his name, his wife shall not have dower of the same land.

369. And if I. S. seised in fee of one acre of land, exchange the same acre with T. B. for another acre in fee, and I. S. entreth and executeth the exchange, for his part, viz. for the acre which was put in exchange to him, and T. B. taketh a wife, and dyeth before that he entreth by force of the exchange, his wife shall not have dower of the one acre or of the other, &c. And the reason is, because the Husband was not seised of that land, either in deed or in law, during the marriage betwixt them, &c.

370. And if a man hath judgment for to recover land, &c. and marrieth a wife, and dyeth before entry or execution sued, his wife shall not have dower, &c. But if the husband be seised in deed, or in law during the marriage, then his laches of entry shall not prejudice the wife of her dower.

371. And therefore if there bee Lord and Tenant, and the Lord marrieth a wife, and the Tenant dyeth without heire and a ſtranger abateth, and the Lord dyeth before his entry, his wife ſhall have dower of the tenancy.

372. And if land be leaſed for life, the remainder unto I. S. in fee, and I. S. marrieth a wife, and the leſſee dyeth and a ſtranger entreth, and I. S. dyeth before any entry made by him, &c. his wife ſhall have dower of the ſame land &c. And if a man be ſeiſed of a villaine in groſſe in fee, and the Lord of the villaine hath iſſue a ſonne, which ſonne marrieth a wife, and the father dyeth, and the ſonne dyeth before any ſeiſure of the villaine, yet his wife ſhall be endowed of the villaine &c. T. 11. h. 4. 88.

373. And if a rent be granted unto a man in fee, and the grantee doth accept of the grant, and taketh a wife, and at the day of payment the Tenant of the land doth tender the rent unto the husband and he will not receive the ſame, but utterly refuſeth the ſame, and dyeth before any receipt of the rent by him, or by any other in his name, or for him, &c. and before any thing paid unto him in name of ſeiſin of the rent, &c. yet the wife ſhall have dower of the rent, &c. But if in the ſame caſe, the husband had brought a writ of annuitie againſt the grantor of the ſame rent, and had recovered in the ſame action, then the wife

ſhall not have dower thereof, &c.

374. And it is to know, that the huſband may preiudice the wife of her dower, by laches of ſuit. And therefore if there be Lord, Meine, and Tenant, and the Tenant doth ceſſe, and the Meine taketh a wife and dyeth, his wife ſhall not have dower of the tenancy, notwithſtanding that her huſband had cauſe of action for the tenancy, &c. and if a man ſeiſed in fee of one acre leaſe the ſame acre unto a ſtranger for life, and after the leſſor taketh a wife, the leſſee doth commit waſt and dyeth, his wife ſhall not have dower of this land.

375. And if there be huſband and wife and the huſband is ſeiſed of one acre of land by wrong title, and is impleaded of the ſame acre by him that hath right who voucheth a ſtranger to warranty, who entreth into the warranty and looſeth, and each of them hath iudgement for to recover againſt the other, and the demandant entreth, &c. and the huſband dyeth before execution ſued againſt the vouchee his wife ſhall not have dower of this land, notwithſtanding that the heire of the huſband ſue forth execution, and this land commeth in lieu of the land which the huſband was ſeiſed of during the mariage betwixt him and his wife, &c.

376. And it is to know, that for laches of pleading the huſband ſhall not preiudice his wife of her dower, if not that it bee in ſpeciall caſes. Notwithſtanding

standing that the Statute of West. 2. cap. 4. recite, Quod si vir implacitatus de tenemento reddat tenementum petitum adversario suo de plano, post mortem viri sui, Iustitiar. adjudicent mulieri dotem, si per breve petat, &c. that is but a rectall of the common law, for the common law ought to bee intended where the husband had right, and he who recovereth no right. And so is the law at this day, if the husband looseth by default. &c. And so was the common law before the making of that Statute, so that that Statute is but an affirmance of the common law in that point.

377. And therefore at the common Law before the making of that Statute, if a man had beene seised of land in fee by a right full title, take a wife and is disseised, and reentreth upon his disseisor, and his disseisor arraign an assise against him and he confesse the disseisin, and the disseisor releaseth the damages, and hath iudgment to recover, and entreth, and the husband dyeth, his wife shall recover her dower against him who recovered in the Assise by the common Law, because that her husband had right, and hee who recovered no right.

378. And if a disseisor be of land who taketh a wife, and the disseisee releaseth all his right unto the disseisor, and notwithstanding that, bring a writ of entry in the nature of an assise against the disseisor and recovereth by default, and the disseisor dyeth, his wife may recover her

dower a gainſt the diſſeiſee, becauſe at this time her huſband had right by the releaſe, and the diſſeiſee no right.

379. But if he who recovereth by reddition or by default, had right, then it ſhall be otherwiſe. And therefore if the heire of a diſſeiſor of land be in by deſcent upon whom the diſſeiſee doth enter, and taketh a wife, againſt whom the heire of the diſſeiſor doth recover by reddition, or by default in a writ of entry in the nature of an aſſiſe, and the huſband dyeth in this caſe, his wife ſhall not recover her dower by writ, becauſe he that recovered had right unto the poſſeſſion, according unto the nature of his action, and the huſband was not ſeiſed of other poſſeſſion during the coverture, but of that poſſeſſion which is deſtroyed and defeated by the recoverie. &c.

H 14.h.4. 31.

380 But if a man ſeiſed of Land in fee take a wife and is diſſeiſed, & ỹ diſſeiſor dyeth ſeiſed, and his heire is in by deſcent, upon whom ỹ diſſeiſee doth enter, againſt whom ỹ heir of ỹ diſſeiſor doth recover by reddition, or by default in a writ of entry in the nature of an aſſiſe, and the huſband dyeth, his wife ſhall recover her dower &c. notwithſtanding that he who recovered had right unto the poſſeſſion, according to the nature of his action, &c. and the reaſon is, becauſe the huſband had an ancient ſeiſin during the coverture before the writ brought, in which the recoverie was, by force of which ſeiſin, the

wife

wife had title to have dower, and the ancient seisin is not defeated and destroyed by the recoverie, &c. H.5.E.3.7.

381. And it is to know, if in a precipe brought against the husband, hee plead misnosmer, which is found against him, by force of wh ye demandant doth recover such recoverie shal not ouste ye wife of her dower if ye demandant had not right, &c. and if in a precipe &c. against the husband, the husband plead coyntenancy, &c. which is found against him, by force of which the demandant doth recover, this recoverie shall not ouste the wife of her dower, unlesse the demandant had right.

382. And if in a Writ of Entry, en le post against the husband, he vouch himselfe to save the taile, and sheweth for cause, That his father gave the same land unto him in taile, &c. and that the reversion is descended unto him from his father &c. and the demandant traverseth the gift, which is found with him, by reason whereof hee doth recover, and the husband dyeth, now if the husband had a release of all actions, or of all the right of a demandant to plead, and did not plead the same, his wife shall falsifie this recovery in a writ of dower, &c. P.12.E.4 dow.14.

383. And if Tenant in taile of land hath issue and dyeth, and a stranger abateth and dyeth seised, and his heire is in by discent, who taketh a wife, And the issue in taile bring an assise of Mordaun-

ceſter againſt the husband, who traverſeth the points of the writ which are found for the demandant, by force of which he doth recover and entreth, and the husband dyeth: In this case it hath beene said, that the wife shall not recover dower of this land, before that this verdict be attainted by the heire in a writ of attaint. &c. Yet it seemeth she shall falſifie this recoverie in a writ of dower immediately after the death of her husband, for ſo much as her husband might have pleaded unto the action of the writ of the demandant, and she cannot have an attaint, &c. And if she shall stay untill the heire hath defeated the verdict by attaint, then perhaps the heire will releaſe, &c. or perhaps will not ſue an attaint, and ſo the wife in diſpite of her ſhall looſe her dower, which is not reaſonable, when ſhe was once entituled to have dower by the poſſeſſion of her husband during the coverture, which poſſeſſion had never beene avoided, if not by the Laches or pleading of the husband, becauſe he might have pleaded unto the action of the writ of the demandant, &c. tamen quære. becauſe that the judgement is given upon the verdict, within which verdict is found matter contrary and repugnant to the matter which ought to be pleaded to the action of the Writt, &c. but if the entry of the demandant had beene lawfull &c. then the Law is cleer, and without queſtion that the wife ſhall

not

not falsifie &c. for then the demandant had beene remitted by his entry, &c.

384. If a disseisor bee of one acre of land, and the disseisor dyeth seised, and his heire enter and taketh a wife, and the disseisee doth recover the land against the husband by default, in a writ of entry ad terminum, qui præterijt, and the husband dye, his wife shall falsifie this recoverie in a writ of dower, causa patet.

385. And it is to know, that a demandant in a writ of Dower shall not falsifie a recoverie had against her husband by default, for Laches of her husband in not pleading a plea which goeth meerely in abatement of the writ, if not that it be in speciall cases. And therefore to say that her husband might have pleaded mi-noritie, &c. or ioynt tennancy, &c. are not causes to falsifie or recoverie, &c.

386. But if she shew matter proving that the demandant had not right nor cause of action, if not ioyntly with a stranger, the which stranger by his deed of release which she sheweth forth, hath released all his right unto her husband (then Tenant of the land) before the action brought by the demandant, &c. This is good matter to falsifie the recoverie for one moitie of the land recovered, &c. So shall it be of all such like cases, &c.

387. And it is to know; That if the husband commit treason, murder, or felonie, for which he is attainted, the same shall ouste the wife of her dower, &c. 13.E.1 do.172. M. 15.E.3 dow.68.

But

But if after the attainder, the husband purchase a chartera pardon. now, of all such estates of inheritance whereof her husband is seised after the purchase of his pardon, &c. which inheritance the issue which by possibilitie he might have by his wife, by post unte might inherit by the common law, &c. she shall have dower if it be not of such inheritances before spoken of, in the chapter of dower, and in other speciall cases. For notwithstanding that she was his wife at the time of the attainder, yet the issue which the husband might have had by her after the purchase of his Charter of pardon, is inheritable, &c.

388. But if the husband bee outlawed in trespasse, &c. the same shall not oust the wife of her dower. for by such outlawrie he shall not forfeit either freehold or inheritance, &c.

389. If there bee Lord and Tenant, and the tenant take a wife, and afterward
1 cesseth, upon which the Lord bringeth a Cessavit, and doth recover, and entreth into the tenancy, & the Tenant dyeth. It seemeth cleere, that the wife shall have dower, for no laches nor default can bee deemed in the wife as to the cessor. But some say, that the wife shall not have dower in this case, because that the cessor doth not lye in any act done by the husband, but it is his not doing, and because it is given by the Statute of Gloucester cap. 4. And if he dye untill it be recovered

by

by judgement, let him be barred of the remnant.

390. But if there be Lord and Tenant, and the Tenant leaseth the Tenancy unto a stranger for yeares, and the stanger selleth, and the Lord receiveth in a cessavit and entreth, the Lesser shall loose his Terme, causa patet. &c. If there be Lord and tenant, and the tenant taketh a wife, and alieneth the tenancy in mortmaine, or letteth a crosse upon it, and the Lord entreth, and the Tenant dyeth, his wife shall have dower of the Tenancy, &c.

391. If the husband of his owne will goe into another Countrey wherein is inhabited with the Kings enemies, and there willingly dwelleth with them, and doth aide and assist them against our Lord the King, his wife shall loose her dower, &c. P.S.B.3. 20.

392. If W. doth enscoffe R. upon condition that if W. pay unto R. ten pound at a day certaine, that the Feoffment shall be void, and if not that it shall be of force, and R. taketh a Wife, and at the day appointed doth not pay the money, and afterwards W. dyeth, and by agreement betwixt the heire of W and R. the heire of W. payeth the money unto R. by which the heire of W. hath the land, and afterwards R. dyeth; his wife shall have dower notwithstanding this acceptance of the money made by the husband Causa patet. See diverse cases concerning dower in the Chapter of Deeds, mutatis

tatis mutandis. See other cases concerning Dower in the first Booke of §. Litteeton. And upon the Writs of Dower in Natura Brevium, with the additions and annotations &c.

393. And because a woman who is entituled to have dower by the common law, ought to have an assignment therof made unto her, Therefore something shall bee said the thing, what persons may assigne dower, and then of what things assignment of dower may be made, and then where the assignment of dower shall bee good notwithstanding that it bee not made by meets and bounds. &c.

394. And it is to know that assignment of dower made by a disseisor is good, and shall not be avoided, if it bee not made by covin or fraud, as shall after bee said, if the woman have right to have the thing in dower.

T.11.E.4 7.

395. But if a disseisor, abator, or intruder bee of land by covyn of the woman who hath right to have dower of the same land, and such disseisor, Abator, or Entruder endow the same woman, The disseisee who hath right unto the land, may avoid and defeat such dower, by his entry into the Land, &c.

396. And if J. D. be tenant of land, unto which a woman hath right to have dower, and he is disseised of the same land by the woman and a stranger, or by the woman alone, and afterwards shee is endowed of the same land by one who is in the

the land by her, and the other ioynt disseisor, or by one of them; Such endowment may be avoided, by the entrée of the disseisée, because she shall not take advantage of the wrong unto which she her selfe was partie, &c.

397. And therefore, If the issue in taile doth disseise the discontinuée of his Father of the Land entailed, and thereof doth enfeoffe his Father, and his Father dyeth and the land descendeth unto him yet hee shall bee remitted, causa patet. And if there be two or three or more ioynt tenants of land, of which land a woman hath right to habe dower and one of the Joynttenants doth assign dower unto the woman according to her right, it is a good assignment, and shall binde his companions; but if he had assigned a rent issuing out of the same land unto the womrn for her dower, his other companions shall not be distrained for the same rent, because he was not compellable by law to assigne unto her a rent for her dower. P.7.h.6. 3.4. do.2

398. And if an assignment of rent bee made unto a woman in allowance of dower which she ought to have of the same land by a disseisor, abator, or intruder, the disseisée, or he who hath right unto the land shall not be bounden by such assignment, notwithstanding that it be without any coyn of the woman, &c. P.10.E 2. do.189.

399. And if a man seised of land in the right of his wife, or ioyntly with his wife, assigne the third part of the same land to the

the wife for her dower. it is a good assign-
ment, and the wife shall be bounden there-
by notwithstanding that the husband dyeth
leaving the wife, for when the husband alone
out of Court doth a thing, which hee and
his wife by law are driven to do, it shall
be intended the act of the one and the o-
ther, if not that it bee in speciall cases,
&c.

400. And if a man seised of two acres
of land in fee, taketh a wife, and doth en-
feoffe a stranger of one of the acres
with warranty, and dyeth, and both acres
are in one Countie, and the heire doth
endow his mother of his acre in allow-
ance of all her dower in both acres, it
is a good assignment: For if the Feoff-
for had borne impleaded by the woman in
a writ of dower, he might have vouched
the heire, and the demandant shall reco-
ver against the heire conditionally, and so
H. 3. h. 6. &c.
17.

401. And if the heire leaseth for life
unto a stranger, parcell of the Land
which hee hath by descent from his Fa-
ther, and doth assigne unto his mother
parcell of the land which hee hath in pos-
session in allowance of all her dower,
as well for the land leased as for the land
which remaineth in his possession, the as-
signment is good. And yet if the woman
implead the Lessee by a Writ of do-
wer and he vouch his Lessor, the wife
shall not have iudgement to recover a-
gainst

gainſt the heire becauſe hee is not bound unto the warranty by his father, who was husband to the woman. Quære, If in ſuch caſe, the Keller vouch the heire generally, and the heire enter generally into the warranty, then it ſeemeth that iudgement ſhall bee given for the demandant againſt the vouchee conditionally, &c.

402. And if there bee 3 or 4 Feoffees of Land of which a woman hath right to have dower, And one of them aſſigne parcell of his land unto the Woman for her dower in allowance of all the Freehold which belonged unto her husband; and ſhee agree unto ſuch aſſignement, It is ſaid, That this aſsignment ſhall diſcharge the other Feoffees againſt the wife for any dower, and ſo it ſeemeth the law is, &c. But ſome have ſaid the contrary, for they ſay, That they cannnt plead this matter againſt the woman in ſeverall Writs of dower brought by her againſt them, tamen quære. And the Feoffee who made Aſſignment cannot come into Court and plead this matter in Actions brought againſt the other Feoffees, becauſe he is a ſtranger unto thoſe actions, and there is not any meanes to bring him into Court, &c. 3 E. 2. Dow. 96.

403. And aſſignment of Dower by the Gardien in Knights ſervice is good, if the woman hath right to have dower of the land, and if the woman hath not

not right to have dower thereof, yet it shall stand good untill it be avoided.

404. But the assignment of dower by a gardein in Soccage is not good as it seemeth, because a writ of dower doth not lye against him. The same law is of tenant by Elegit, Tenant by Statute marchant, Tenant by Statute Staple, and by Lease for yeares, &c. But an assignment of dower made by him who hath the freehold is good, if it be of such a thing as may be assigned and of which the woman hath right to have dower. And notwithstanding that the woman hath not right to have dower thereof; yet it shall stand good, untill it bee defeated and avoided, &c.

405. Now is to shew of what things an assignment of dower may bee made. And as to that, Know, That parcell of the thing to which the woman hath right of dower may be assigned unto her, if not that it be in speciall cases. And therefore if a woman hath right to have dower of lands, tenements, rents, commons, and such like parcell of the same thing may be assigned unto her in the name of dower. And it is not necessary or requisite that the third part of the thing unto which shee hath right of dower be assigned unto her; For if the fourth part, the fifth part, or the moitie be assigned unto her in the name of dower for all the freehold which her husband had, and shee agree thereunto, it is sufficient, and it is a good assignment, &c.

7.h.2.rec. 95.

406

406. And it is to know that the heire is not compellable to assigne unto his mother for her dower the capitall Messuage which was his fathers, or any part thereof, notwithstanding that his mother bee dowable of the same messuage. But if the heire doe assigne unto her the same in allowance of other land, and shee agree thereunto, the assignment is good. And the heire may assign unto her other lands and tenements whereof she is dowable, in allowance of the same Messuage, and if there be not any other lands or tenements whereof shee is dowable besides the said capitall messuage, and the heire assigne unto her a chamber in the same messuage in the name of dower, in allowance of the same messuage, and she agree thereunto, it is a good assignment. But it seemeth she is not compellable to take the same, because the messuage is as it were an entire thing. &c. And it shall be but trouble and vexation unto a woman, to have a chamber within the house of another man, and if she will not agree unto the same then the heire may assigne unto her a rent issuing out of the same messuage in the name of her dower, &c. And such assignment is good without deed. And the same law is, of assignment of common of estovers or of common of pasture &c. Or of any other thing whereof a woman is dowable.

407. But lands or tenements, whereof a woman is not dowable cannot bee assig-

assigned unto her in the name of her dower in allowance of other lands or Tenements whereof she is dowable, &c. mutatis mutandis, &c.

408. And it is said that all the land which the husband had in possession during the coverture cannot be assigned unto her in the name of dower, notwithstanding that the husband were seised of such estate during the marriage, that the issue which by possibilitie they might have between them, by possibilitie might inherit the same land, by the common law, &c.

409. And it is to know, That land in Wales may bee assigned unto a woman for her dower in allowance of all the freehold of her husband, &c. And by this assignment she shall be excluded to demand dower of any other lands which her husband had within any place in England, &c.

P. 7. E. 3. f. do. 103

410. If a woman bring a writ of dower &c. and hath judgement for to recover, and betweene the judgement and execution the tenant assigne unto her a rent by word issuing out of the same land, whereof she demandeth dower in allowance of her dower for the same land, to which assignment shee doth agree, it shall be a good bar in a Scire fa. brought by the woman to have execution of the land recovered &c. But in the same case, If the assignment had beene by word of other land, whereof she is not dowable, which land is not comprized within her

P. 21. E. 3 fo. fa. 99.

be-

demand; it is said that such assignment shall not be a barre in a Scire facias brought by the same woman to have execution of the iudgement given in the writt of dower &c. because it is not pursuing unto the iudgement, and because it is by word &c. and this seemeth to be good Law, &c.

411. It is a common speech, That the dower of a woman ought to be assigned unto her by metes and bounds, if not, yet it be in the case of tenants in Common, &c. which is put in the chapter of dower in the first booke of Sr. Littleton. And yet in divers cases assignment of dower may be made without metes and bounds.

412. And therefore if there bee two men copercenors of lands in fee simple by the custome of Gauelkind, and one of them taketh a wife, and hath issue and dieth before partition &c. and his issue entreth and endoweth his mother generally of the third part of the mottie, and the agree thereunto, it is a good endowment, and yet it is not assigned by metes and bounds, and by such assignment shee shall hold in common with the other copercenors. And in the same case by one Pelat, the issue ought have assigned unto the woman her dower in certaine, viz. by metes and bounds. For if shee had made partition with his Uncle before the assignment might have beene by metes and bounds: But notwithstanding it is good, it is good in the manner

8.E.3. Entre 75.

M. 16. E. 2. 91. ner and forme as it is made, as before it is said.

413. And it hath beene holden, if the heire enter &c. and assigne unto his mother the third part throughout the whole land which was his fathers, to occupie the same in common, of which land shee was dowable, and shee by force thereof enter and occupie the same with him: is a good endowment, tamen, it seemeth at this day the law is otherwise, Ideo quære &c.

414. But if a woman bring a Writ of dower of land, and recover her dower, and sueth forth a Writ unto the Sheriffe to put her in execution, &c. the Sheriff ought to put her in execution of the third part by mes and bounds, if he may so doe &c.

33. h. 3. dow. 103. 415. If a woman bee endowed of the third part of the profit of a Mill, that is not certaine, and yet it is good: and she shall grind there toll-free, the same law is of a Bailywick, mutatis mutandis, &c.

416. And it is to know that if a man be seised of three shillings of rent charge in fee, and taketh a wife, and hath issue, and dyeth, the wife cannot distraine for the third part of this rent before assignement made, and yet it certainly appeareth what rent she is to have, &c. And notwithstanding, That she bring a writ of dower of the same rent, and recovereth; yet she can distreine for no rent behind after the Judgement, before execution sued; notwithstanding that the certainty there-

thereof doth appeare. And how end in what manner the Sheriffe shall put her in seisin thereof, see in the Chapter of Iudgements: Mutatis mutandis, &c. 40.E.3. 22.

417. And if there be Lord and a woman tenant by Fealtie and three shillings rent, and they enter-marry, and the Lord dyeth, the wife shall have twelve pence of the rent for her dower of the seignorie by way of retainer, &c without any manner of assignement made by any person &c.

418. And it is to know, That sometimes a woman shall be new endowed. And as to that, know, that when the Lands, Tenements, or &c. are lawfully devested out of her possession, and in despite of her, she shall be new endowed of the third part of that which doth remain in which the seisin whereof she is dowable, is not [illegible] or avoided, if not, that it be in speciall cases, &c.

419. And therefore, if a [illegible] of two acres of land in [illegible] title, and is seised of another [illegible] by disseisin, and takes [illegible] and his heire entre [illegible] acre which his Ancestor had by disseisin unto the wife in name of her dower in allowance of all the freehold which her husband had &c. And the disseisee doth re-enter into the acre assigned unto her, and put her out, shee shall bee new endowed of the third part of the two acres which her husband had by rightfull title, in such manner, as if the other acre had never beene

in the poſſeſsion of her husband, &c.

420. And if Tenant in tale be of land and thereof doth make a diſcontinuance in fee, and the diſcontinuee taketh a wife and hath iſſue, and dyeth, and the diſcontinuee is not ſeiſed of any other thing during the coverture, of which his wife is dowable, and his iſſue entreth, againſt whom his mother bringeth a writ of dower, and doth recover, and hath execution of the third part by metes and bounds, and the iſſue in tale bringeth a Formedon againſt the Tenant in dower, and he voucheth the iſſue of the diſcontinuee, who entreth into the warrantie and loſeth, and the demandant hath execution. Now, the Tenant in Dower ſhall be new endowed of the third part of the two parts which remain &c. notwithſtanding that his iſſue hath enfeoffed a ſtranger of part thereof or of all; For notwithſtanding that the poſſeſſion of her husband had (whereof ſhee is dowable) be defeaſible, yet ſhe ſhall have dower thereof until it be defeated, &c.

43. Aſſ. 32.

421. If a man ſeiſed of two acres of land in one Countie, take a wife, and enfeoffeth a ſtranger of one of the acres with warranty, and hath iſſue and dyeth, and his iſſue entreth into the other acre, and the wife brings a writ of dower againſt the Feoffee, and he vouch the iſſue, &c. who loſeth by default, and the wife hath indgement conditionall, viz. To recover againſt the vouchee, if bee, &c. and the demandant ſueth execution accordingly, and

ſhe

she is put in execution of land, which the
voucher hath by descent in the same county
where the dower is brought: as heire to her
husband, of which land she is dowable, and
the tenant holdeth in peace, and ỹ voucher
is restored to ỹ land wᵗ ỹ wife recovered by
a Writ of Deceit, in this case ỹ wife shall
have a Scire facias against the feoffee who
was tenant in the writ of dower; and
notwithstanding that the tenant hath en-
feoffed a stranger of the same land before
the Scire facias brought against him, yet
his feoffee shall be bounden by the judge-
ment given in the writ of dower; because
that the judgement in the writ of dower
was given of the land conditionally, &c.

422. And if a man seised of land in Fee
taketh a wife, and hath issue, and dyeth and
the wife take a second husband, and the is-
sue entreth into the land as heire unto his
father, and doth assigne the third part
thereof by metes and bounds to his mother
by the agreement of her husband for her
dower, in allowance of all the free hold
which his father her late husband was set-
sed of, and her husband which now is doth
discontinue, the same land in fee, and dy-
eth, the wife may have a cui in vita against
the discontinuee of this land: and it hath
beene holden, that she may refuse it, and
be new endowed according unto the value
of the whole land, which was in the pos-
session of her husband during the cover-
ture, of which possession she was dowable,
&c. tamen quære, because the same woman

8. E. 2. Vou. 157

M. 3. E. 3. 50.

T. 4. E. 3. 36.

H. 33. E. 3 do. 177.

which

with her husband might have compell
the heir to have the same woman by
writ of dower. And if they have done
she shall not be new endowed. But the
appeareth a difference in this case, wh
she is endowed by writ of dower, a
where by the Assignement of the heir
or by another person, without Writ
dower, &c.

423. And it is to know, that if the fr
hold whereof she is dowable, be in the p
session of diverse persons by severall t
tles; the wife in a writ of dower brough
against one of them, shall recover but
third part of the freehold which is in h
possession: So that a man or a wom
who hath possession of parcell of the f
hold (of which the woman is dowa
shall not be charged according to the po
session of the whole freehold of which th
woman is dowable; if her or shee wi
not.

424. Now is to shew, unto what perso
the tenant in dower shall bee attendan
and for what services. And as unto
know, that Tenant in dower for the mo
part shall ber attendant unto him in th
reversion, &c. And also she may be atte
dant unto Cardun in knights service
and unto his executors during the tim
the heire of her husband is in ward, &c
And she shall be attendant unto them, p
by the rate and portion of the rent as th
Land doth amount unto which she holdeth
in dower, if not that it be in speciall cases
&c.

425

425. And therefore if there be lord, mesne, and tenant, by knights service, and the 2 shillings rent, and the tenant taketh a wife, and hath issue and dyeth, his issue being within age, and the mesne seise the ward of the body and of the land, and entreth into the Tenancy, and doth assigne the third part of the tenancy by meres and bounds unto the woman, mother of the ward for her dower, she shall be attendant unto the Gardien in knights service by twelve pence rent, and if the Gardien dye during the nonage of the heire, then she shall be attendant unto the executors of the Gardien by twelve pence rent, untill the heire shall come of full age, and when the heire commeth to his full age, she shall be attendant unto him by 12. pence, &c. P. 33. E. 3. do. 138

426. And if there be Lord and Tenant, by Fealtie and twelve pence, and the tenant taketh a wife, and hath issue and is disseised of the tenancy, and dyeth, and the disseisor doth endow the wife. Now she shall be attendant unto the disseisor by foure pence. But if the issue brings a Writ of Entre sur disseisin es le quibus against the tenant in dower of the land, which is holden in dower, And she sheweth forth the speciall matter and saith, that she claimeth nothing in the land, but in right of her dower, and that she is ready to be attendant to whom the court shall award, &c. In this case the court ought to award, that she shall retaine the land de- 12. Ass. p. 20.

manded for her dower, and that she shall be attendant unto the heire who is the demandant: and by this judgement the reversion is in the demandant, and not before, and it seemeth the demandan hath not other remedy in this case to come to the reversion of the land which the wife holdeth in dower, &c. For if he had entred upon the Tenant in dower &c. shee might have had an assise, and recovered, because she had right to have dower, &c. and shee cannot at the time of the assignement made demand dower thereof of any person, if not against the disseisor who made the assignement, &c. And the assignement was not made by Covin, &c. tamen quære. if he hath any other remedy to come to the reversion &c. But now the wife shall bee attendant unto the heire by force of the judgement, &c. and not unto the disseisor, &c.

427. And in the same case, the heire cannot enter upon the disseisor, and put him out of the other two parts of the tenancy, &c. And if he grant the reversion of the Tenant in dower unto a stranger, and the Tenant in dower attorne, shee shall bee attendant unto the grantee, causa patet.

11. 32. E. 3 do. 131.

428. If there be Lord, Mesne, and Tenant, and the Tenant holdeth of the Mesne by three pence, and the Mesne holdeth over by twenty pence, and the tenant taketh a wife, and the mesne doth release unto the tenant all the right which hee

hath

hath in the tenancy, &c. and the tenant dyeth, and his wife is endowed by the heire of the third part of the tenancy: she shall be attendant unto him by one peny, and not by the third part of the twenty pence, because, that she shall be endowed of the best possession which her husband had during the coverture, &c.

429. Lord and Tenant are by fealty and twelve pence, the tenant taketh a wife, and the Lord purchaseth the tenancy in fee, and the estate is executed in him, and the tenant dyeth, and his wife is endowed of the third part of the tenancy, now shee shall not bee attendant for any rent, because that by the purchase of the tenancy in fee by the Lord the seignorie was determined, and a thing which is determined cannot be revived.

430. Lord Mesne, andd tenant are by fealtie and twelve pence, the tenant taketh a wife and dyeth, and his wife is endowed of the third part of the tenancy by the heire of the husband, shee shall bee attendant unto him for foure pence: But if in the same case the Lord paramount release unto the heire all his right in the tenancy. H.3 E.3.9
by this release the Menaltie is determined, and therefore the wife shall not bee attendant unto the heire for any rent after the release &c. because she was attendant unto him but in respect of his charge over, &c. P.10.E.3 26.

431. But if Lord and tenant be by fealtie and twelve pence, and the tenant

give

give the tenancy unto J. S. in taile, to hold of him and his heires by fealty and twenty shillings rent, and J. S. take a wife, and dyeth without issue, and the donor entreth and endoweth the wife of the donee, &c. she shall be attendant unto him for six shillings eight pence, for if the husband had beene living, hee should held all the land by twenty shillings &c. and she is endowed of the possession of her husband, &c. And she in this case shall not be attendant unto the dower in respect of an over charge, But she shall bee attendant unto him by reason of a speciall reservation made by the donor &c. And when shee had the third part of the land, out of which the reservation was made, it is reason that she should be attendant for the third part of the rent which was reserved, &c. And if in the same case the Lord release all his right in the Tenancy, unto the tenant who was donor, yet she shall be attendant unto the donor for six shillings eight pence, &c.

34 Ass. p. 25.

432. If there be Lord, Mesne, and tenant, and the tenant holdeth of the mesne by Fealtie and three shillings rent, and the mesne taketh a wife, and the tenant bringing a writ of Mesne against the Mesne, and foreiudge him, and the mesne dyeth, ẏ wife of ẏ Mesne shall have dower of the rent by which the tenant held, and shall not be attendant unto the tenant, causa patet.

433.

433. If Lord and tenant are by fealty and twelve pence, and the tenant giveth the tenancy in taile, reserving twelve pence, and the donee taketh a wife, and hath issue, and discontinueth the land in taile in fee and dyeth, and his wife bringeth a writ of dower against the discontinuee, and recovereth, and hath execution: she shall not be attendant for any rent unto the discontinuee, for she is no charge able in the same course her husband was, for the donor cannot avow upon her for the rent reserved &c. But her may avow for the same upon the issue in taile notwithstanding the discontinuance, and yet the wife shall not be attendant unto the issue in taile, untill he hath recontinued the estate taile &c. tamen quære

434. Lord and tenant are by fealtie and a horse, price forty shillings, and the tenant taketh a wife and dyeth, and his heire entreth into the tenancy, and endoweth the wife of the third part thereof; shee shall be attendant unto the heire for thirteene shillings foure pence. But if the tenant had beene by fealtie and a horse to be rendred yearely, &c. without limiting and making mention of what value the horse should bee, &c. in that case the wife shall be attendant unto the heire in rendring unto him every third yeare a horse, &c. The same lawes of other things which are entire, mutatis mutandis, if not that it be in speciall cases.

435. And as to dower by the custome, sufficient thereof hath beene shewed by M. Littleton in his Chapter of Dower, and in Natura brevium with the additions upon the Writs of Dower. But it is to know, If the custome bee that a woman shall have for her dower the moitie of lands and tenements, which were her husbands holden in Socage within such a precinct, &c. If the husband have a Bayliwick &c. or a faire, &c. in fee during the coverture within the same precinct, The wife shall not have dower, because it is no Tenement &c. And a custome shall be taken strictly.

11. E. 3. dow. 85.

436. But if the husband hath a Bayliwick &c. or faire, &c. as appendant unto his Mannour within the same precinct, of which manour the husband was seised in fee during the coverture, and held the same in Socage, now if the wife bee endowed of the moitie of the Manour by the custom, she shal have the profit of ꝑ moitie of the Bayliwick &c. or of the faire as appendant unto the moitie of the manour. But Quere if the Bayliwick, or faire be dilappendant in fee from the Manour after the death of the husband, and before the endowment, whether she shall then have the moitie of the profit of the Bayliwick or faire, &c. But it seemeth she shall have the same because she shall be endowed of the best possession which her husband had during the coverture or marlage, &c.

437.

437. Of Dower ad ostium Ecclesiæ, a good declaration hath beene made by Master Littleton in his first booke, in the chapter of dower, and in Natura brevium, with the additions: and it is said that such endowment is good without deed, as well of lands lying in an other County, as of lands lying in the county where the marriage is solemnized, because such endowment ought to bee made after the contract made at the Church doore, if it bee the custome so to doe, for then they are husband and wife, and the husband cannot make a deed unto his wife, nor cannot make liverie of seisin unto his wife to make her to be in the land by the same husband. And because it is not requisite that the lands bee with the view, &c.

438. If an infant at the age of eight yeares, endow his Wife ad ostium ecclesiæ without deed, such endowment is void, notwithstanding that hee assent and agree unto the mariage, after his age of fourteene yeares; For a void thing cannot be made good. For notwithstanding that the mariage was good and effectuall untill disagreement, yet such endowment made by him, at such age, whereby his inheritance shall be bounden, is not good, &c.

439. And such endowment made De Capitali Baronia, tent de Rege in Capite, or De Capitali Messuage feodi militis is not good. And it hath beene holden that if

M.4.h.3. dow 118 T. 9.h.3. dow. 190

If a man assigne unto his wife when he espouses her, at the Church doore, &c. the moitie of all his lands and tenements which shall come unto him in fee, during the coverture, and afterwards during the coverture, her purchaseth lands or tenements in fee, and dyeth. That the wife shall have the moity of those lands by force of the assignment, &c. tamen quære.

440 The same law is, If a man endow his wife, ad ostium Ecclesiæ, of such lands which his mother holdeth in dower, the reversion to him in fee, upon condition, that if his mother dye during the marriage betwixt them, that then his wife shall have all the lands for her dower, and after his mother dyeth during the marriage betwixt them, &c.

H.14.h.3. dow.189.

441. And as unto Dower, ex assensu patris it hath beene spoken of by M Littleton in his first booke of the chapter of dower and in Natura brevium, with the additions upon the writs of dower. And it is to know, that so and in the same manner as there is dower ex assensu patris, in the same manner and forme there is dower ex assensu matris, mutatis mutandis.

P.8.h.3. dow.103. M.10.E.3 dow.134 M.40.E.3 41.

442. But there is no dower, ex assensu fratris nec consanguinei, and the wife ought to have a deed of the father, or mother proving his assent and consent for his freehold shall be bounden thereby, and livery and seisin shall not bee made thereof, And the father may well make such a deed unto his sonnes wife, &c.

&c. And yet in ancient bookes, such assent and consent hath beene tryed by proofes, but the law is contrary at this day. And such endowment ought to bee made immediately after affiance made betwixt them at the Church doore, or in the Church if the Marriages are used to be in the Church, &c.

443. And yet it hath been holden in ancient Bookes, that where the Sonne is heire apparent unto his father (and so he ought to be) for such endowment made unto the wife of the second sonne is nothing worth, if he marrieth against his fathers will, and afterwards within eight weekes after the mariage, the same son endow his wife with the assent of his father of the lands and tenements of the father, &c. It was holden that the same was a good endowment &c.

444. And it is to know, that where the endowment ex assensu patris, vel matris, is good and sufficient in law. The wife of the sonne immediately after the death of her husband in the life of the husbands father may enter into the same lands so assigned unto her in dower, &c.

445. And know, that if there be father and sonne, and the father is seised of land in fee, and leaseth the same land unto a stranger for life, and afterwards the son taketh a wife, and endoweth her, ex assensu patris, of the reversion of the same land, and after the lessee dyeth, and the father entreth into the land seised, and the

the sonne dyeth: The Sonnes wife shall not have dower by force of this Assignment, because that at the time of the Assignement and assent, the wife was not dowable of the reversion by the common law, notwithstanding that the reversion had beene in the possession of her husband and notwithstanding that the free hold and the Fee are in the Father of the husband, simul & semel during the life of her husband, this matter shall not helpe the wife, for the title of the wife by force of such indowment did not begin after such endowment and assent of the father, &c. nor before such endowment, and such assent but take all its effect onely at the same time.

446. The same Law is, if the Sonne endow his wife with the assent of the Father, of lands of the Father which he held joynly in Fee with a stranger at the time of his assent, &c. So shall it be if such endowment be made of lands or tenements which the father holdeth for the terme of his life, and the time of such endowment.

447. But if the Father had beene seised in taile of such lands, whereof such endowment is made at the time of his assent &c. he shall bee bounden thereby, during his life: But the issue in taile shall not be bounden thereby, nor a woman who hath title to have dower of the same land, before the assent, &c. As the Fathers wife which hee had at the time of the assent, nor any stranger who have ancienter

title

title to the same land, &c. shall bee bounden by such endowment or assent, &c.

448. And it hath beene holden. If there bee father and sonne, and the father is seised of land in fee with his wife, in the right of his wife, and the sonne endoweth his wife of the same land with the assent of the father, and the Sonne dyeth leaving his father, that the Sonnes wife shall not have dower of this land against the father, yet the Father may make Feoffment of the same land, during the coverture betweene him and his wife, and it shall be good against him; and it hath beene said that it is because that in such case the husband doth presently dismisse himselfe of the possession, but in the other case he remaineth seised of the same land during the coverture and in the right of his wife, and when this matter doth appeare unto the Court. The Court who is a third person shall barre the sonnes wife of her dower, because otherwise the Court should doe wrong unto the wife of the father, tamen quære, for that the father cannot plead such matter, but if it be in an action in which receit lyeth. If the wife be received upon the default of her husband, she may plead this matter, &c. yet notwithstanding that she is received, It seemeth, That upon the matter of Law, the Sonnes wife shall

have the dower which was assigned unto her by her husband with the assent of his father &c.

449. For if a man be seised of land in fee in the right of his wife, & he & his wife grant a rent charge out of ỹ same land unto a stranger in fee, & ỹ grantee is seised thereof, and afterwards her distraineth for the rent, and Rescons is made by the grantor, and he bring an assise of the same rent, &c. and the wife of the grantor be received, notwithstanding that she hath nothing in the Rent, &c. upon the default of her husband, and plead the speciall matter; yet notwithstanding the plantiffe shall have indgement to recover, &c. And yet in the same case the husband continueth possession in the land, out of which the rent was issuing, in the right of his wife, &c. But notwithstanding that, the grant is good, at the least during the Coverture betwixt the husband and his wife, &c.

450. Dowment of the most faire part is in such manner and forme, as M. Littleton hath shewed in his first booke in the Chapter of dower, and it is to know, that if in such case the lands which the woman hath as Gardien in Socage ber not of value to make such endowment, or if a rent charge be issuing out of the same land, which rent hadbis begining before the woman had title to have dower &c. and by reason of

of which rent or &c. the lands which he hath as Gardien in Socage be not of sufficient value to make such endowment, then the woman by way of replication may shew this matter against the Gardien by knights Service, &c. And if she doe so, and the Gardien by knights service cannot deny it, &c. or traverseth the same, which by tardict is found for the woman; then the woman shall recover so much of the lands holden in knights service, as shall amount with the lands holden in Socage unto the value of ꝑ third part of the land sholden in knights service and in Socage if the case so require &c.

451. But if all the lands which the husband had were holden in Socage, &c. and his wife hath them as gardien in Socage; shee shall bee allowed of the third part of the profits upon her accompt, in allowance of her dower in the meane time: But in such case she shall not endow her selfe of the third part of the Lands or Tenements, to hold as her freehold &c.

452. And if in the same case the woman Gardien in Socage bring a writ of Dower against the heire; it is no plea for the heire to say, that she is gardien in Socage and may endow her selfe, &c.

453. And if a woman Gardien in Socage bring a writ of dower against the Feoffee of the husband with warranty.

The feoffée cannot shew the speciall matter, and pray that the court would award, that she may endow her selfe of the fairest part, &c. because that the feoffée may vouch the heire. But the Gardien in Knights service may so doe, &c.

454. And it is no good plea for the Gardien in knights service to say, that the woman who is demandant in the writ of dower, was seised of certaine lands and tenements as Gardien in Socage; and pray the court that shee may endow her selfe of the most faire part thereof, &c Causa patet. Vet Quære if he say that the woman was seised of lands and tenements &c. as Gardien in Socage at the day of the purchase of the writ; it seemeth the same is a good plea, if the lands and tenements be not devested out of her possession by rightfull title. and if it were so, yet the plea is good untill this matter be shewed by the woman by way of replication, &c.

455. If a woman Gardien in deed in Knights service of lands and tenements which were her husbands doth bring a writ of dower against another Gardien in Knights Service, of lands and tenements which were her husbands, it is no plea for her to shew the speciall matter, and pray that it bee awarded by the court that shee may endow her selfe

selfe, of the most faire part, &c. because that she being gardien in knights service, tooke the issues profits and revenewes of her same Lands unto oee owne use, &c.

O 3 CHAP:

Chap. VI.

TENANT BY THE CURTESIE.

456. After Littleton in his first book in the chapter of Tenant by the curtesie, hath well declared of tenant by the Curtesie, and hath also put a good parime in Law concerning Tenant by the Curtesie in his chapter of dower, &c.

457. And it is to know, That a man shall not be Tenant by the Curtesie of right only, &c. nor of estates in infapence, if not that it be in speciall cases, &c. A man shall not be tenant by the

the curtesie, &c. of an use of lands or tenements, &c. A man shall not be tenant by the curtesie of a possession in Law, &c.

And therefore, if a sole woman seised in Fee of lands or Tenements be disseised, and she taketh a husband, and they have issue, and the wife dyeth before any reentre made, &c. the husband cannot enter the lands and tenements and have them as tenant by the curtesie, because there was but a right of entry or action &c. to him and his wife, during the coverture, as in the right of his wife: But if the wife during the coverture had entred into the same lands and tenements her husband not knowing thereof, and the disseisor entreth during the coverture, and the wife dyeth, the husband knowing of the entry of the wife, may enter and ouste the disseisor of the same lands and tenements, and have and hold them during the terme of his life as tenant by the curtesie, &c.

459. If a woman be seignoresse, and a man be tenant, and they entermarry, and have issue, and the wife dyeth; The husband shall not be tenant by the curtesie of the seignorie, because the Seignorie was in suspence.

460. But if a ſole woman hath common or rent in fee iſſuing out of land &c. And the tenant leaſeth the ſame land unto a ſtranger for the terme of another mans life, and the woman marrieth with the Leſſee, for the Terme of another mans life, and afterwards the Wife dyeth, the Husband ſhall be tenant by the curteſie of the common, &c. The ſame law ſhall be if a woman hath houſebote and playbote appendant unto her inheritance, mutatis mutandis. &c.

461. If a ſole woman hath a rent charge in fee iſſuing out of land, and the tenant leaſeth the land unto J. S. for twenty years, & the woman marryeth with the leſſee, and they have iſſue, and the wife dyeth within the Terme, Quere. if the husband ſhall be tenant by the curteſie of the rent after the terme determined. &c.

462. If there be woman ſeignoreſſe, and Tenant, and the tenant doth enfeoff a ſtranger of the Tenancy upon condition, and the woman ſeignoreſſe marryeth with the feoffee, and they have iſſue, and the condition is broken, and the wife dyeth, and the feoffor entreth upon the feoffee and putteth him out of the tenancy for the condition broken (during the coverture) yet the feoffee ſhall not be tenant by the curteſie

of

of the ſeignorie. &c.

463. If a woman ſole ſeiſed of land in fee enfeoffeth thereof a ſtranger unto the uſe of the woman and her heires, and afterwards the wife taketh huſband, and they have iſſue, and the wife dyeth before any eſtate of inheritance executed in the wife, during the coverture of the ſame land which was in uſe, the huſband ſhall not be tenant by the Curteſie of the uſe, &c. And ſo ſhall it be of an uſe of other things inheritable, mutatis mutandis. Et cætera.

464. And if there bee father and daughter, and the father is ſeiſed in fee of lands and tenements, and the daughter taketh huſband, and they have iſſue, and the father dyeth ſeiſed in fee of the ſame lands and tenements, and the daughter dyeth before any entry made by her, or by her huſband or by any other perſon or perſons for them, The huſband ſhall not be tenant by the courteſie of the ſaid lands and tenements, becauſe there was but a poſſeſſion in law of the Lands and tenements in his wife during the coverture, the ſame law is in all like caſes, et cætera.

465. And it is to know, That if before the ſtatute of Weſt. 2. De donis conditionalibus. cap. 1. lands have been given

given unto the husband and his wife, and unto the heires of their two bodies begotten, and the husband dyed, and she being seised of such estate in the same lands and tenements taketh another husband, and they have issue and the wife dyeth, The second husband shall be tenant by the curteſie of the same lands, et cætera, notwithstanding that the wife dye after the said statute made, and the same appeareth by the words of the Statute, which are. Nec secundus vir, et cætera.

466. And it is to know, that if a woman sole, seised of lands in fee taketh a husband, and hath issue, and the husband dyeth; and she being so seised, et cetera, taketh another husband and hath issue by him, and the wife dye leaving the first issue, yet the second husband shall bee tenant by the curteſie, et cætera.

467. If a sole woman seised of land in fee, leaseth the same land unto J. S. for terme of life, and after she marryeth with I. D. and they have issue et cætera, and the wife dyeth leaving the lesſee for life: the husband shall not be tenant by the curteſie of this reverſion: But quære, if the wife hath reserved a rent et cætera, unto her and her heires upon the lease whether the husband shall have

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the rent as tenant by the curteſie, or not. And if the leſſee for life dye leaving the husband, he may enter into the land, and hold the ſame for the terme of his life, as tenant by the curteſie, &c.

468. If there bee father and daughter, and the father is ſeiſed of an advowſon in groſſe, in fee, the daughter taketh a husband, and the father dyeth, ſo as the advowſon deſcendeth unto the daughter, and the daughter hath iſſue by her husband and dyeth, before that the advowſon doth become void, yet the husband ſhall bee tenant by the curteſie; and notwithſtanding that the advowſon doth become void during the coverture, and the wife dyeth after the Six moneths paſt, and before any preſentment made by the husband, &c. So as the Ordinary doth preſent for lapſe unto this avoydance, yet the husband ſhall preſent unto the next avoidance, as tenant by the curteſie, &c.

469. If a rent do deſcend in fee unto a Married woman, and ſhe dyeth before any day of payment, yet the husband ſhall bee tenant by the curteſie of the rent, notwithſtanding that there was not any ſeiſin of the ſame rent, during the coverture betwixt them, and notwithſtanding that the day of payment of the rent incurred in the life

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of the wife, and the wife dyeth before any demand of the rent made by the husband, yet the husband shall be tenant by the curtesie, &c.

470. But if possession in law of lands or tenements in fee descend unto a married woman, which lands are in the County of Yorke, and the husband and his wife are dwelling in the County of Esser, and the wife dyeth within one day after the descent, so as the husband could not enter during the coverture for the shortnesse of the time, yet he shall not bee tenant by the curtesie, &c. And yet according to common pretence there is no default in the husband. But it may be said, that the husband of the woman before the death of the ancestor of the woman might have spoken unto a man dwelling neare unto the place where the land lay to enter for the woman, as in her right immediately after the death of her Ancestour, &c.

471. And it is to know, that if the issue which the husband hath by his wife be borne alive, notwithstanding it dye before it be heard cry, and before it be baptised, if there be no laches in the husband of the baptisme by reason of any contempt, &c. the husband shall be tenant by the curtesie; but if such

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laches through contempt be in the husband, some say the husband shall not be tenant by the courtesie, &c.

472. If a man seised of lands in fee as in the right of his wife, be disseised thereof before he hath issue, and afterwards he hath issue, and the wife dyeth before any reentry made of, yet he may reenter and have the land as Tenant by the curtesie, &c.

473. And if there bee husband and wife; and they have issue and the issue dyeth, and afterwards lands in fee simple descend unto the wife, and the husband entreth, and the wife dyeth; hee shall be tenant by the curtesie, &c.

474. If the husband before issue had, do by make a feoffment upon condition on the part of the Feoffee of land which he holdeth in fee in the right of his wife and afterwards hee hath issue by his wife, and the condition is broken, and the wife dyeth, now the husband may reenter for the condition broken; and when he hath reentred, he shall hold the same land as tenant by the curtesie, tanquam, &c. But the law is contrary, if the Feoffment had been made by the husband, being within age, &c. quarata murandis, &c.

475. And if the husband and wife are

are seised of lands in fee as in ye right of the wife, and this land is recovered against them by false swearing, and after execution sued thereof they have issue, and the wife dyeth, now the husband shall have attaint, and when he hath recontinued the land and avoided the recoverie by attaint; hee shall hold the same land as tenant by the curtesie, the same law is, of a recoverie had against the husband and wife by erroneous processe, mutatis mutandis, &c.

CHAP.

CHAPTER 7th.

Testaments.

476. NOw we are to speake of Testaments. And it is to know, That all manner of Testaments are, either testaments written: or Testaments nuncupative. And a testament nuncupative is, when as the Testator maketh his will by words before witnesses. But more properly, It is said, a Testament Nuncupative, when the Testator lyeth languishing for feare of sudden death, dareth not to stay the writing of his Testament; And therefore, he prayeth his Curate, & others his neighbours, to beare witnesse of his last will, and declareth by word what his last will is. And such will is as strong as a testament or will in writing, and sealed with the seale of the Testator; if not, that it bee in speciall Cases, &c.

477. And notwithstanding that a Testament in writing be not sealed with the seale of the Testator; yet it is good But Quere if it be good to make freehold or inheritance to passe.

478. If a man make a Testament, or his will, and afterwards he maketh another will by word, and the latter will be proved before the Ordinary, and by him

put in writing and sealed with his seale, such later will shall avoyd the former will, if not that it be in speciall Cases. And so alwayes, the later will and Testament shall avoid the former will, and Testament.

479. And if a man of sound memory make two wills, that is to say, one testament in the sixth yeare of our Lord the King that now is, and another Testament in the eighth yeare of the same King, and after the testator sick in his death bed, and being dumb, and a man in the presence of his Neighbours deliver it both the Testaments unto the Testator, and he taketh them in his hand: And one of the Neighbours, willeth him that he deliver back unto them the Testament, which he willeth shall stand and be his last will, and he deliver backe unto them the Testament with the former date, and keepeth the other testament by him, now the testament which is delivered back shall stand, notwithstanding that it hath the former date and was written before the other testament, &c.

44. Ass. p 36
M. 44. E. 3 33.

480. And notwithstanding that the later will shall make void the former will: yet if a man be seised of Land in fee, and thereof doth enfeoffe a Stranger, and declare his will upon the livery of seisin made unto the Stranger, that the feoffee shall be seised unto the use of the feoffor for terme of his life the remaynder unto I.S. in fee. Now he cannot alter this will by

T. 19. h. 8. 11.

by a later will in prejudice of him in the remainder, because that the use is in him in the remander presently, so as he may sell the same. But if in the same Case the remainder of the use had by me unto the right heires of the feoffer, then the feoffer might alter this use by a later will. And if the feoffor had declared his will upon the livery of seisin, that the feoffee shall be seised unto the use of T.F. for life, the remainder unto the use of the feoffor for life, or in taile, the remainder unto the use of a stranger in fee, in that Case the feoffer cannot alter the will by his later will.

481. If a man seised of Land in fee thereof doth enfeoffe a stranger unto the intent to performe his will, and afterwards the feoffer maketh his will, and deviseth the same Land unto a stranger in fee, In this Case the feoffor may alter this will by a later will, because that in this Case, the devisee shall not have the Land but by force of the will, and that cannot take effect but after the death of the devisor. The same Law is of Land, tenement rent, Common, &c. divisable by custome used in some places, &c. And also the same Law is of other Chattells realls and personalls devised: Mutatis mutandis, &c. H. 13. h. 6. to subpena 23.

482. And it is to know, that Executors shall not have an action as Executors before the testament be proved, and therefore, if the date of the probate of the testament T. 7. h. 4. 18. M. 18 E. 2. fo. ff. 110.

ſtament bee ancienter then the date of the making thereof, the writ ſhall abate, &c.

483. And if the Executors nor any of them will not prove the will, and a deviſe of a Chattell reall or perſonall is by the will, it ſeemeth that the deviſee hath no remedy for to come to the thing deviſed, tamen Quære, if he ſhall have remedy a- gainſt the Adminiſtrators, or Adminiſtrator if there bee any, and if there be no Adminiſtrator, Quære if hee ſhall have remedy againſt the Ordinary, &c. But this remedy againſt the Ordinary ſeemeth to bee but little, for if hee ſhall have any remedy it ought to be by ſuite in the ſpirituall Court more ſhall be ſaid of this matter after, &c.

484. And foraſmuch as it is neceſſary to have the teſtament proved, ſomething ſhall be ſaid concerning that, viz. By what perſons, the teſtament ought to be proved, and before what perſons it ought to be proved, &c. And it is to know, that alwayes the teſtament ought to be proved by the Executors, or one of them at the leaſt.

485. And if there be three Executors and two of them will not prove the will, nor meddle with the goods of the deceaſed, and the other Executor proveth the will notwithſtanding this refuſall made by the other two who were made Executors and notwithſtanding that the will were proved by the third Executor only; yet (the

the other two Executors and either of them may intermedle with the goods of the testator, and administer them at what time soever they will; because that when the will is proved, they cannot be put out of the will; and the same will giveth them title for to administer the goods of the testator, aswell as it giveth title unto him who proveth the will, in so much as that notwithstanding that they never administer, and he who proveth the will will bring an action as Executor of the same will. It behoveth him to bring the action in all their three names: But they shall not be charged as Executors before they administer.

486. And it is to know, that testaments ought to be proved before the Ordinary, if not, that it be in speciall places, where Lords have the probate of the testaments of their tenants before their Stewards, or before themselves in their temporall Courts. And the reason why spirituall men have the proving of testaments is, because it is to be intended, that the spirituall men have better consciences then lay men, and that they have more knowledge what thing is more for the profit, and benefit of the soule of the testator, then laymen have: And that they will looke more then lay men, that the debts of the deceased be paid and satisfied out of his goods, and that they will see his will performed so far as his goods will extend, &c.

487. But if the goods of the deceased will not extend to satisfie his debts, it shall be well done if the officers of the Ordinary take nothing for the prising of the goods, nor for the probate of the will, nor for Registering thereof, nor for any other thing concerning the will; For if they take their Fees, by such meanes, the debts of the deceased may not be satisfied and paid.

488. And notwithstanding, that a man doth devise a Chattell reall or personall by his will, yet the Executors are bound in Law to pay the debts of the deceased, before they pay or deliver any Legacies. And therefore the Common Law is, that the devisees of Chattells reals or personall cannot enter upon the Legacies nor take them without the assignement or delivery of the Executors, or by their assent, Or without the assignment or delivery or assent of one of them, and the reason is, because the soule of the testator shall not be in danger for the not payment of his debts, &c.

489. And it is to know, that Wills proved before the Bishop himselfe of the Diocesse, which the party dieth in good, if he have not goods and chattels of the value of 40. s. in any other Diocesse, for if he have goods and chattells of the value of 40. s. in two severall Diocesses, Then it ought to be proved before the reverend Father in God, Thomas Lord Cardinall Legat à later, Archbishop of, &c. Primate

mate and Chancellor of England, or his Officer, or before the reverend Father in God, the Archbishop of, &c. or his Officers, or before them both, or their Officers. 1 H. 6. 1.

490. A testament proved before the Commissary of the Bishop is sufficient, &c. And a testament proved before the Sequestraters of the Arch-deacon of such a place, and his seale put thereunto is sufficient. For all testaments cannot be proved before the Ordinary himselfe, and properly the probate of the will doth belong unto him to whom the sequestration doth belong. 11 H. 4. 64. 7 E. 4. 14. 3 E. 3. fol. 5

491. A testament proved before any Officer of the Ordinary deputed to the same is sufficient; But alwayes when the Kings Court writeth unto any Officer spirituall; they ought to write unto him who is immediate Officer unto the Court; which is the Bishop himselfe.

492. And some times the party shall be driven to shew, how the Arch-Deacon, or such other Officer hath power to prove the will, or to commit administration; And therefore if in an action of debt brought against administrators, the plaintiffe declare how that the Bishop of Win. committed administration unto them, &c. And the defendants plead that the testator died intestate at D. &c. and how that the Official of the Arch-Deacon of the same place did commit administra- T. 37. h. 6. 28.

on unto them, without that that the Bishop did commit the administration unto them. The defendants ought to shew, how the ArchDeacon hath power to commit administration, as by prescription, or by composition, or otherwise.

493. And it is to know, that a testament proved is of so great force, that a man shall not have a direct traverse thereunto n zunto the letters of administration; But the defendant may say against the testament that the testator, made not the plaintiffe his Executor, &c. And some have said, that because the writ ought to agree with the testament, that the testament is traversable, but that is false; for a scire facias to doe execution ought to agree with the words of a fine in the manner, &c. Yet the fine is not traversable directly, &c. and the reason why the testament is not traversable is, because that then it shall be tryed by the certificate of the Ordinary, and he will not certifie contrary to that which is shewed unto the Court under his seale, or under the seale of the Officer deputed to the same.

18. E. 2. Test. 6.

T. 18. 6. 2. Test. 6.

494. If a testament beare date in Cane in Normandy, and be proved in England it is sufficient for the Executor to bring an action thereupon. But if an obligation be dated in Cane in Normandy, the obligee, nor his Executor shall not have an action upon the same, &c.

M. 2. E. 2. Oblig. 15.

CHAP. 12.

CHAPTER 8th.

Deviſes.

495. NOw is to ſpeake of Deviſes. And firſt is to ſhew what perſons may make Deviſes, and then unto what perſon, a deviſe may be made, then what things may be deviſed, and when ne eſtate is limitted in the deviſe of Land, Tenement or Rent, &c. What eſtate the deviſee ſhall have, and when the deviſe ſhall be determined as unto him in the remainder, by the act of him who hath or ſhall have the particular eſtate of the thing deviſed by the deviſe upon which particular eſtate the remainder is dependant, and then how the deviſees ſhall come unto the things deviſed, &c.

496. And it is to know, that all perſons who may make teſtaments or wills may make a deviſe of the ſame thing, of which they may make a teſtament and will, and not of other things, if not that it be in ſpeciall Caſes, and therefore if a parſon of a Church be ſeiſed of Lands in fe in his owne right, and doth enfeoffe a ſtranger of the ſame Land unto the uſe of him and his heires, Now he, viz. the feoffor may make a teſtament, and deviſe of this uſe and of his proper goods and Chattells: But hee cannot make a teſtament

ſtament nor deviſe of a uſe of his Glebe Lands or Tenements, or other things which hee hath in the right of his Church, &c.

M. 29 h. C. 44. 497. An abbot or prior of a Monaſtry cannot make a deviſe of Lands nor of Tenements deviſable nor of an uſe of Lands tenements, &c. Nor of goods, nor Chattells, &c. But if an abbot or prior be created a Biſhop, & by the ſame bulls of his creation, our holy father the Pope hath diſpenſed with him, and hath granted unto him to hold his abby, and alſo the Biſhoppick; If ſuch Biſhop and abbot purchaſe the lands deviſables in fee, he may make a will and deviſe of them: if he purchaſeth lands not deviſables in fee, and thereof enfeoffeth a ſtranger unto his uſe; Hee may make a will and deviſe of this uſe, &c. And of all his proper goods and Chattells, he may make a will and deviſe: But he cannot make a deviſe of Lands or tenements deviſables which hee holdeth in the right of his Biſhoprick or in the right of his abby. Nor of a uſe of Lands or Tenements which hee holdeth in the right of his Biſhoprick or in the right of the abby, nor of goods and Chattells which he hath in their rights, &c. Cauſa patet, &c.

498. And a Deane, or Maſter of an Hoſpitall or gardian of a houſe, &c. cannot make a teſtament nor a deviſe of Lands or Tenements, &c. Or of an uſe of Lands or tenements, &c. Or of goods and Chat-

tells

teſts which they have, in the right of their Church or house. The ſame Law is of Major and Cominalty, Mutatis mutandis, &c.

499. And therefore if a Deane and Chapter, or, &c. recover debt, or annuity or other thing in a Court of record as in the right of their Church or house, &c. and die before Execution ſued, &c. his ſucceſſor may have a ſcire facias to execute the ſame judgement, &c. But if they have lands or tenements deviſables, &c. Or an uſe of lands or tenements, or goods or chattells in their owne right. they may make a will, and a deviſe of them.

500. A deviſe by one joynt tenant of Land deviſable, which he holdeth in fee, at his death joyntly with a ſtranger is not good; The ſame Law is of a uſe in joynture, &c. But if ſuch deviſor doth ſurvive all his companions, then ſuch deviſe is good, as is ſhewed by M. Littleton in his third booke in the Chapter of joynt tenants and in Natura brevium, with the additions upon the writ of Ex gravi querela, &c. where are put many good caſes concerning deviſes.

501. If a Woman maketh a will of the goods of her Husband, and dieth, and her Executor proveth the will, and after the probate of the will the Husband doth deliver the goods deviſed unto the Executors, now he hath made it a good will, notwithſtanding that hee was not privy unto 26 E. 3. 71. M 2. E. 2. Deviſe 14.

unto the making thereof; and yet a colourable argument may be made why it should not be good, by this delivery of the goods made by the Husband, &c. For in so much as the Wife had not leave of her Husband to make a will, it is void, &c. But it cannot be said void, for that it is proved. And also it shall be intended, that by the delivery of the goods by the Husband unto the Executors of the Wife according to the will, that he did at the first assent unto the making of the will, and such leave or assent is sufficient by word, &c.

31. H. 7. 14. per Fineux

502. And a maried woman may make a will of goods which she hath as Executrix unto another man without the leave of her Husband, as it appeareth in the Chapter of grants. And a monke who is Executor by the leave of his Soveraigne may make a will of the goods which he hath as Executor, &c. and deverse other persons may make wills as more fully appeareth in the Chapter of grants; Mutatis mutandis, &c.

503. And an infant of the age of foure yeares may make a will, and it shall be good for all his goods and chattells because of such things the Executors are accountable before the spirituall judge, or the Ordinary, so as it cannot be intended but that they shall be expended for the benefit, and profit of the soule of the Infant.

504. But of freehold or inheritance devisable,

devisable, or of an use of free-hold or inheritance, a devise made by an infant is not good, because they are at the common Law, for the Executors are not to entermedle therewith, and the ordinary cannot demand accoumpt of them. &c. But if there be a Custome, that all lands and tenements within such a precinct, &c. are devisable by all manner of persons, which are of the age of 15 years, or above such age. A devise made of lands or tenements by one of such age is good. But if a man seised of such lands and tenements in fee, and thereof doth infeoffe a stranger unto his use, and his heires, and dieth, and his heire being of the age of 15 yeares maketh his will, and deviseth the same Land given in use to him unto a stranger in fee, and dieth, this devise is not good, &c.

M. 37. H. 6. 5.

505. Now it is to shew, to what persons the devise may be made. And as to that. Know, that a devise may be made unto all such persons unto whom a grant may be made, Mutatis mutandis, if not, that it be in speciall cases. And it is to know that the devise ought to be good, and to take effect at the time of the death of the devisor, if not in speciall cases, otherwise it shall not be good, as put case, A man seised of Land devisable, devise the same Lands unto the Priests of a Colledge, or of a Chauntry, and there is not any such Colledge or Chauntrey at the time of the death of the devisor, and afterwards such

a Colledge or Chauntry is made, yet the deuise is void, because the deuises are purchases, and when a man taketh lands or tenements by purchase, hee ought to be of ability to take the same when it falleth vnto him by the purchase, or otherwise he shall not haue the same, &c. as it appeareth in the Chapter of grants, &c.

506. If a man seised of Land deuisable in fee deuiseth the same Land vnto his wife for the terme of her life, the remainder vnto I his sonne, and vnto the heires males of his body begotten, and for default of such issue, the remainder vnto the next heire male of the donor, and vnto his heires males of his body begotten, and dieth, and his wife entreth by force of the deuise: and afterwards. I his son dieth without issue male of his body, liuing the wife being tenant for terme of her life, and afterwards shee dieth, and one P. D. and A. his wife enter into the same land as in the right of A. his wife, as cosen and heire to the donor, and haue issue a sonne, and the husband and wife by deed enrolled enfeoffe a stranger of the same land in fee; and the said sonne as next heire male enter into the Land, his entry is not lawfull, Causa patet, &c.

507. And it is to know that a man may deuise by his will, that his Executor, or the Executors of his Executor may sell his Lands, &c. and the same is not, yet the Executors of the Executor were not

known

knowen at the time of the death of the deviſor, but ſhall be in eſſe and knowen at the time of the death of the Executors of the deviſor; See diverſe Caſes concerning this matter in the chapter of grants, mutatis mutandis, &c.

508. And if a man ſeiſed of Land devisable in fee hath two ſonnes and one daughter, which daughter hath iſſue two daughters, and deviſeth his Land unto a ſtranger for life, the remainder unto his two ſonnes for life, the remainder unto the next of the blood of his Child, the deviſor dieth, and the mother of the two daughters dieth, the ſtranger dieth, the eldeſt ſonne dieth without iſſue, the ſecond ſon doth thereof infeoffe a ſtranger with warranty, upon whom the two daughters doe enter, and the feoffee putteth them out, and they bring an aſſiſe, the aſſiſe will well ly. And it is to know that if a man be ſeaſed of Land devisable in fee, he may deviſe the ſame Land unto his Executors for yeares, for life, in taple, or in fee, &c. 11. H. 2. Deviſe 27.

509. If a man ſeiſed of land devisable in fee deviſe the ſame unto I. S. for life, the remainder Eccleſiæ Si Andreæ in Holborne, &c. and the deviſor dieth, it ſeemeth the remainder is good by way of deviſe, but otherwiſe would it be by way of grant, as it appeareth in the Chapter of grants.

510. But the comminalty of a company which is not incorporated by the kings

Kings Charter to purchaſe, &c. cannot take by a deviſe. And therefore if a man ſeiſed of Land deviſable in fee, deviſeth the ſame Land unto A. for life to finde a chaplaine to ſing for his ſoule in the Church of, &c. the remander unto the brotherhood of the Whittawrs in London, to finde a Chapline, &c. Now if the, viz, the Whittawers be not incorporated by the Kings Charter, and enabled for to purchaſe: the remainder is void. And know that the chiefe and ſupreame officers of the fraternity, corporation, or guild, are taken in Law for the beſt men of the fraternity, corporation, or guild, &c. See diverſe Caſes concerning this matter in the Chapter of Grants, Mutatis mutandis, &c.

49. E. 3. Aſſ. p. 2.

§ 11. Now is to ſhew what things may be deviſes. And as to that, know: that all manner of chattells reals and perſonalls, may be deviſed, and freehold, or inheritance of Lands and Tenements, &c. deviſeable, or in uſe, may be deviſed, if not that it be in ſpeciall Caſes. And as to chattells realls and perſonalls, it is to know, that all ſuch chattells realls and perſonals which the Executors ſhall have may be deviſed: if not, that it be in ſpeciall Caſes, &c.

§ 12. And therefore if a man be ſeiſed of Land in fee or in fee tayle, and ſolve the ſame Land, and deviſeth the Come growing upon the Land at the time of his death to a ſtranger, it is a good de-

vice.

viſe, notwithſtanding that the land is not deviſable nor in uſe, &c. But if the deviſor had deviſed the trees growing upon the land at the time of his death, the deviſe as unto the trees is void, becauſe that the heire of the deviſor ſhall have them, and not the executors, &c.

513 If a man ſeiſed of land in fee as in the right of his wife, leaſeth the ſame land for yeares unto a ſtranger, and the leſſee ſoweth the land, and afterwards the wife dyeth, the corne not being ripe, In this caſe the leſſee may deviſe the corne growing upon the land, and yet his eſtate was certaine and is determined: but a thing uncertaine was the cauſe of the determination of his eſtate, &c. See diverſe caſes concerning this matter in the firſt booke of Mr. Littleton in the Chapter of tenant at will, &c. Mutatis mutandis, &c.

514 If tenant by the curteſie of lands or tenements for life leaſeth the ſame unto a ſtranger for yeares, and the leſſor dieth within the terme of years, in this caſe, if the corne were growing upon the lands, and not ripe at the time of the death of the leſſor, the leſſee may well deviſe the ſame, &c.

515 But if after the ſowing, the leſſee for yeares doth infeoffe a ſtranger, and eſtate, &c. and the leſſor doth enter for a forfeiture, he ſhall have the corn, &c. The ſame law is, of a leaſe for years upon condition, Mutatis mutandis, &c. And if land bee recovered againſt leſſee for

yeares into writ of wast, he cannot devise the corne, notwithstanding it bee growing upon the land at the time of his death, &c. And so, if land be recovered against his lessor by a more ancient title, &c. But otherwise it is, if a common recovery be had against his lessor in a writ of Entre en le Post, or in any other writ by a false and feyned title, &c.

M.7 H.7 11.

516 If a man seised of land in fee doe thereof enfeoffe a stranger in mortgage upon payment and not payment on the part of the lessor, at a certaine day, and the feoffee soweth the land, and the feoffor paieth the money at the day appointed, and entreth, now the feoffee cannot devise the corne growing upon the land as it is said, tamen quære.

P.44 E.3. 14.

517 If a mannor be put in execution upon a statute merchant, & he who hath the mannour in execution hath a ward, after the execution by reason of the mannor, which ward is as much worth as the debt doth amount unto, he who's lands are put in execution, shall have a Scire facias against the Tenuisee, &c. and shall have his Mannor back againe: but if the Tenuisee hath sowed the land, he may well devise the corne growing upon the land.

7 Ass.p.30

518 And if a man be seised of land in the right of his wife, &c. and soweth the same land, and deviseth the corne growing upon the land, &c. and dieth before the corne be severed, the devisee shall have the corne, and not the wife: but other-

wise

wiſe is it of graſſe, not ſeverd at the time of the deviſors death, &c.

519 If a diſſeiſor be of land, and he ſoweth the land; Now if the diſſeiſee enter, or recover by a writ of Aſſiſe before the corne bee ſeverd he may deviſe the corne, and ſo may not the diſſeiſor; But otherwiſe it ſhould be if the corne be ſeverd before his entry or before his recovery, notwithſtanding that it remaine upon the land, &c. For then the diſſeiſor may deviſe the ſame, &c. But the Law is otherwiſe in the ſame caſe of trees ſeverd which were growing upon the lands, &c. 37 H. 6. 25. 5 H. 7. 17. 28 H. 6. 1. 15 E. 4. 30

520 And it is ſaid, if tenant in taile of Land leaſeth the ſame land for life, and the leſſee doth ſow the ſame land, and the tenant in taile dieth, and the iſſue in taile doth recover in a Formedon en le diſcender, before the corne is ſeverd, the iſſue in taile may well deviſe the corne, tamen quære.

521 If a man ſeiſed of land in fee hath iſſue a daughter, and dieth, his wife being great with child of a ſon, and the daughter entreth and ſoweth the land, and after the ſowing and before the ſeverance, the ſonne is borne, and one of his next friends entreth for him; yet the daughter may deviſe the corne growing upon the land. Cauſa patet. But if after the ſowing and before the ſonne is borne, the mother hath recovered her dower againſt the daughter, & the land ſowed be aſſig- 9 H. 6. 6.

ned unto her by the Sheriffe for her dower in allowance of other lands, Now the mother may deviſe the corne growing upon the land, and the daughter cannot; tamen quære.

522 And know, that the ſtatute of Merton, cap. 2. which giveth, Quod omnes viduæ de cætero poſſint ligare blada, &c. as unto this point is but in affirmance of the common law; for if tenant in dower or, &c. ſoweth the land which ſhe holdeth in dower, and maketh her executors, and dieth, the corne not ſevered, the executors ſhall have the corne, notwithſtanding that they are not ſevered by the common law. And to be ſhort, tenant in dower may deviſe the corne growing upon the land which ſhe holdeth in dower at the time of her death, by the common law. And ſo was the law taken in Anno 4. H. 3. deviſe 6. which was fifteen years before the making of the ſtatute of Merton, &c.

523 If two tenants in common be of lands in fee, and one of them taketh a wife and dieth, and his wife is indowed, &c. And ſhe and the other tenant in common ſow the land, &c. and afterwards ſhe maketh her executors and dieth, the corne not being ſevered, her executors ſhall have the corne in common with him who held in common with the tenant in dower. H. 21. h. 7. 29.

524 If the Gardian in Knights ſervice aſſigne unto the mother of the ward more land then ſhe ought to have for her dower

dower, and ſhe ſoweth the ſame land, and afterwards maketh her executors and dieth before the heire be of full age, and afterwards the heire at his full age doth enter upon the corne not ſevered, he may put out the executors of the tenant in dower out of the poſſeſſion of the corne growing upon the land, whereof ſhe ought not for to have dower. In the ſame manner ſhall it be, if the Gardian in Knights ſervice indoweth the mother of the ward, &c. of more then ſhe ought to have, &c. And the heire when he commeth at his full age, may ſue forth a Writ of Admeaſurement of dower, &c.

525 And it is to knowe, that the wardſhip of body and lands, and a leaſe for yeares of lands and tenements, and a grant for yeares of a rent, and horſes, kine, ſheepe, &c. and gold and ſilver, in plate, or money, and rings, or in any ſuch manner, And beds, and pots, and pannes, and platters, and all manner of chattels reals and perſonals whatſoever they be deviſables, the executors ſhall have them, if they be not deviſed, &c.

526 But where a man hath a ſorme intereſt in ſuch chattels, &c. at the time of his death, A deviſe made thereof is nothing worth, Cauſa patet. And where ſuch chattels are annexed unto the freehold or inheritance, ſo as they cannot be ſevered from the ſame by him who hath property in them: then a deviſe made by him who hath property in them is not good.

527 And if a man doth infeoffe a stranger, of land upon payment, and not paimēt on the part of the feoffee, viz. that if the feoffee pay unto the feoffor 20 li. at the feast of Easter then next following, that then he shall keepe the land unto him and his heires, & if he do not pay, &c. that it shall be lawfull for the feoffor to reenter. Now if the feoffor make his will, and deviseth the money when it shall be paid unto I. S. and dieth before the day of payment, it is a good devise conditionally, viz. if the feoffee payeth the money unto his executors. And so shall it be of 20 li. payable at the feast of Easter upon one Obligation, or upon a contract upon such condition as before is mentioned, Mutatis mutandis. And yet if he had devised the obligation, or the counterpart of the indenture unto a stranger, the devisee could not bring an action in his owne name upon the obligation, but he may give, or sell the obligation unto the obligor, or unto a stranger, &c. And the devisee cannot enter into the land by force of the condition, notwithstanding that the consideration be broken, and that he hath the indenture. Causa patet. But it seemeth he may give or sell away the indenture, &c.

12 E. 2. condition 8.

528 Now is to speake of devises of freehold and inheritance. And it is to know, that when freehold or inheritance doth passe from one person unto another by force of devise, it behoveth that it be

devisable

deviſable or otherwiſe in uſe. For if it be not deviſable, nor in uſe, the deviſe is void. And it is to know that before the ſtatute of Weſt. 3. which is called and known by the name of Quia emptores terrarum, &c. There was no uſe of lands or of houſes, if no that it were expreſſed upon the delivery of the eſtate, &c.

529 And therefore if before the ſtat. of Quia emptores terrarum, tenant in fee ſimple of land had enfeoffed a ſtranger without any conſideration and without expreſſing of any uſe, yet the feoffee ſhould be ſeiſed unto his owne uſe. For notwithſtanding that no conſideration were expreſſed, &c. yet the law made a conſideration; for in the ſame caſe the feoffee ſhall hold of the feoffor by the like ſervices, as the feoffor held ever, the which is a ſufficient conſideration to alter the uſe; but notwithſtanding if in the ſame caſe it had beene expreſſed in the feoffement, to have and to hold the land unto the feoffee, and unto his heires unto the uſe of the feoffor and his heires, then the feoffee ſhall be ſeiſed accordingly. The ſame law is, if any other uſe be expreſſed in the feoffement, &c.

530 But if a man ſeiſed of a rent charge in fee before the ſtatute of Quia emptores terrarum, grant the ſame rent unto a ſtranger in fee without any conſideration, and without expreſſing of any uſe, the grauntee ſhall be ſeiſed unto the uſe

uſe of the graunto: and his heirs, becauſe that in this caſe the law doth not make any conſideration.

531 But it is ſaid, that if a man be ſeiſed of lands in fee, and graunt a rent iſſuing out of the ſame land unto a ſtranger without any conſideration, &c. The graunte ſhall be ſeiſed of this rent unto his owne uſe; for the law cannot intend ſuch a graunt to be made unto the uſe of the graunto:. And it is ſaid by ſome, that if a man hath common in groſſe which is certaine in fee, and he graunt the ſame common unto a ſtranger in fee without any conſideration, &c. That the graunte ſhall be ſeiſed of the Common to his owne uſe, becauſe that the profit of a Common is to be taken by the mouths of cattell, ſo as the profit is conſum'd, &c. But as unto that it may be ſaid, that it is as great profit for the grantee to have it for his cattell as to have the value of the uſage of the Common in rent, &c. Tamen quære.

533 If there be Lord & tenant by homage and fealty, and the Lord grant his Seignory unto a ſtranger, unto the uſe of the graunto: and his heires, and the tenant attorne, the homage and fealty are not valuable, and yet the graunte is ſeiſed thereof unto the uſe of the graunto: to ſuch intent as the graunto: may graunt the ſeignorie unto a ſtranger, or ſell it, &c. uſe it by his will, &c.

533 And if tenant in fee-ſimple be

at this day infeoffe a ſtranger thereof without any conſideration, &c. The feoffee is ſeiſed unto the uſe of the feoffor and his heires, for the law in this caſe doth not make any conſideration, for the feoffee ſhall not hold of the feoffor, &c. but he ſhall hold of him of whom his feoffor held, by force of the ſtatute of Quia emptores terrarum. More ſhall be ſaid of this matter in the Chapter of Reſervations, &c.

534 And if a man at this day, or after the ſtat. of Weſt. 2. cap. 1. De donis conditionalibus, and before the ſtatute de quia emptores terrarum, was, or is ſeiſed of lands in fee, and giveth the ſame in taile unto a ſtranger without any conſideration, &c. the donee is ſeiſed unto his own uſe, for the law maketh a conſideration, by the way of tenure, patet. How.

535 And if a man ſeiſed of land, leaſeth the ſame without any conſideration for life, &c. the leſſee is ſeiſed unto his owne uſe, and yet if nothing be reſerved, he ſhall do only fealty unto his leſſor and his heires, or unto his grauntee of the reverſion, &c.

536 And if a leaſe for yeares be made without any conſideration, the leſſee is ſeiſed unto his own uſe. And yet according unto the opinion of divers men, leſſee for yeares ſhall not do fealty, &c. But the reaſon is, becauſe that the reverſion of

of the ſame thing remaineth in the leſſor, ſo as the law cannot intend that the intent of the leſſor was, that the leſſee ſhall be ſeiſed for his life, if he hath not made expreſſe mention upon the leaſe. And alſo he may deviſe his Land for years, notwithſtanding that it be not deviſable nor in uſe, &c.

537 And if a man at this day be ſeiſed of a ſeignorie rent, or common in groſſe which is certaine in fee, and grant the ſame unto a ſtranger in taile, for life or for yeares without any conſideration, they are ſeiſed thereof unto their owne uſe, Cauſa patet. But in all the caſes of feoffements, graunts, or leaſes, if a uſe be expreſſed in the feoffement, graunt or leaſe, &c. They, viz. the feoffees, doness, graunters, and leſſees, ſhall be ſeiſed unto the uſe expreſſed, if it be not againſt law. As put caſe it is expreſſed unto the uſe of a Monk profeſſed who is not ſoveraigne of the houſe, &c. as is aforeſaid. If a deviſe be made of freehold or inheritance, it behoveth that the freehold or inheritance be deviſable or in uſe, otherwiſe the deviſe is void.

538 And therefore, if a man be ſeiſed of land, rent or common, or, &c. in fee not deviſable, and deviſeth the ſame unto a ſtranger in fee, in taile, or for life, and the deviſor dieth, the deviſe is void, &c. But if a man be ſeiſed in fee of lands, tenements, rents, common, or, &c. deviſables: or if a man be ſeiſed in fee of lands,

tenements

tenements, rent, or common, or, &c. not deviſable, and therof doth enfeoffe, or graunt the ſame unto a ſtranger in fee, unto the uſe of the feoffer, or graunto: and his heires, &c. If he, viz. the feoffor or graunto: deviſeth the ſame lands, tenements, rent, common, or, &c. in fee, in taile, for life, or for the terme of another mans life, it is a good deviſe, &c.

539 If husband and wife be ioint purchaſers unto them, and unto the heirs of the husband, of lands, tenements, or &c. deviſables, and the husband deviſeth this fee ſimple after the death of him and his wife unto a ſtranger by his will, &c. it is a good deviſe. &c. 27. Aſſ. p. 6.

540 If lands or, &c. be deviſed unto the husband and wife in taile, the remainder unto the right heires of the husband, and the deviſor dieth, and the husband and wife enter, &c. and the husband deviſeth this fee ſimple unto his wife and dieth, it is a good deviſe. &c. Know that the reverſion of lands or tenements deviſable ſhall paſſe by the name tenarum ſeu tenementorum, &c. So when one thing ſhall paſſe by the name of another, and when one thing ſhall paſſe as parcell of another, and diverſe other good matters concerning deviſes in the Chapter of grants, Muratis mutandis, &c. M. 34. H. 6. Deviſ. 4.

541 And if a man ſeiſed of land in fee, willeth by his teſtament, that his executors ſhall ſell the ſame land and diſtribute the profits coming thereof for his ſoule 38 Aſſ. p. 1

ſoule, and the deviſor dieth; now the inheritance ſhall diſcend unto the heire, and ſhall continue in him, untill they, viz. the executors ſell, &c. and then the executors may enter, &c. and thereof enſeoffe the vendee according to the ſale.

542 But if lands deviſable are deviſed unto the executors for to ſell, &c. In this caſe the executors after the death of the deviſor may enter unto the lands, &c. becauſe they were deviſed unto them.

543 But if a man tender unto them money for the lands, but not ſo much as the lands are worth, and they refuſe it, to the end that they may ſell the lands dearer, and for two yeares take the profits of the ſame lands unto their own uſe, the heire may enter and put out the executors, cauſa patet.

544 But if a man be ſeiſed of lands not deviſable, and doth thereof enſeoffe a ſtranger unto his uſe, viz. unto the uſe of the feoffer and his heires, and afterwards the feoffer deviſeth the ſame land unto his executors for to ſell, and dyeth, in this caſe, the executors cannot enter into the lands, and continue poſſeſſion thereof, becauſe they have only a uſe of the land by this deviſe, but they may enter and thereof enſeoffe the vendee, &c. by force of the ſtatute of 1 R. 3 cap. 2. And ſo may every deviſee of land in uſe do, &c. And alſo a gift, grant, releaſe, leaſe, and confirmation, made by ceſtuy que uſe, &c. are good and effectuall by force of the ſaid ſtatute,

statute, viz. the statute, &c. But a devise made unto cestuy que use in taile is void; so is a devise made by tenant in taile of lands devisable, &c.

545 If a man maketh his will, and maketh two executors, and willeth that his executors shall sell his land, &c. and dyeth, and one of them will not intermeddle, and the other executor taketh the administration upon him, and payeth the debts, &c. The sale made by him alone is good; and if both the executors take upon them the administration, and one of the will not sell, then the sale by the other executor alone is good; but if one of the executors selleth unto one man and the other executor selleth unto an other, it is said by some, that the sale of him which is most advantageous for the testator shall be good; but others say, that the first sale shall be good, and the other void, whether it be more beneficiall for the testator or not. Ideo quære.

P. 46. E. 3. Devise 8.

19 Ass. p. Ep. 16.

546 But if the will be, that the executors shall joyntly sell, and one of them sell unto one man, and the other selleth unto another man, and afterwards both the executors joyne in a sale unto a third person; in this case the last sale is good, and the other sales are not good.

547 And if a man willeth, that his lands shall be sould for the payment of his debts, and doth not expresse by wdom the sale shall be, it shall be sold by his executors, because the land shall be sold for the

the payment of his debts, and the pay-
15 H 7.12. ment of the teſtators debts, doth belong unto the executors, &c. But if a man willeth that his land ſhall be ſold, and doth not ſay by whom, nor for what, it ſeemeth to be void, Tamen quære, the opinion of other men.

19 H 8.9. 548 If a man willeth, that A. and B. his executors ſhall ſell his land, &c. and they refuſe before the Ordinary, yet they may ſell becauſe they are certainly named; ſo as it appeareth, that the will of
15 H.7.12. the teſtator is, that they ſhall ſell, whether they refuſe or not. But otherwiſe it ſhall be (as it ſeemeth) if he willeth, that his executors ſhall ſell, without expreſſing their names, and they refuſe before the Ordinary, they cannot ſell, &c.

549 If a man maketh I.S his executor, and willeth that a Monk ſhall ſell his land, and ſhall diſtribute the profit
19 H.6.25 thereof for his ſoule, the Monk is executor to his purpoſe. If a man willeth that his executors ſhall ſell his lands, and diſtribute the profits comming thereof for his ſoule, and they prove the will, and make their executors, and dye before they ſell, the executors ſhall ſell the ſame:
15 H.7.21 but if they make no executors, their adminiſtrators ſhall not ſell, for want of privity, for the ſale is a thing of truſt, &c.

550 If a man willeth that his executors ſhall ſell his land, if they all dye, but one, before any ſale made by them, he who ſurviveth may ſell. If a man willeth

that

that I. his heire ſhall ſell, &c. and I. dieth before the ſale, his heire ſhall not ſell the land.

551 If ceſtuy que uſe, willeth that his feoffees ſhall ſell his land, they ought to ſell joyntly by reaſon of their joynt poſſeſſion, &c. But if all the feoffees but one dye before ſale made by them, then he who ſurviveth may ſell, becauſe that the poſſeſſion of the whole is in him, &c.

552 If a man willeth that I. S. his now executor ſhall ſell his land, the executors of I. S. ſhall not ſell the ſame, becauſe it appeareth by the words of the will, that no other ſhall ſell: and alwayes he ſhall ſell in whom confidence & truſt is repoſed. And therefore if a man willeth that I. S. Maior of London ſhall ſell, &c. And I. S. is Maior of London at the time, and before the ſale another man is choſen Maior, in this caſe I. S. ſhall ſell, and not the new Maior. And ſo is it in the like caſes, &c.

553 If a man willeth that his executors and his feoffees ſhall ſell his land; and the executors ſell without the feoffees unto one man, and the feoffees without the executors ſell unto another man, and afterwards the executors and the feoffees ſell unto a third man, In this caſe the laſt ſale is good, and the other two ſales are not good, &c.

554 And it is to know that when the land is found, ſo as it cannot be ſold, that the heire ſhall have the ſame. As in

caſe

caſe. A man ſeiſed of Land deviſeable, deviſeth by his will, that his Land ſhall be ſold by his Executors, and dieth; and all the Executors die inteſtate before any ſale made by them, or any of them. In ſuch caſe the heire ſhall keepe the Land: And if Ceſtuy que uſe of Land in fee willeth that I. S. now his Executor ſhall ſell, &c. And I. S. dieth before any ſale made by him; then the uſe is in the heire to keepe to him, and his heires forever, &c.

555. Now is to ſhew, when no eſtate is limited in the teſtament or will unto the deviſee, what eſtate the deviſee ſhall have. And as to that, know, that when no eſtate is limitted, That the deviſee ſhall have an eſtate according to the intent of the deviſor, which intent ſhall be expounded by the words in the will; if not that it be in ſpeciall caſes.

556. And therefore, if Ceſtuy que uſe of Land or, &c. in fee, or of a man ſeiſed of Land or, &c. deviſable in fee deviſeth the ſame Land by his will unto I. S. Now I. S. ſhall have the ſame for his life, becauſe that the intent of the teſtator cannot be otherwiſe taken by the words of the will.

M. 22 E. 3. Deviſe 20. 557. If Lands be deviſed unto I. S. to have and to hold unto him in perpetuum, It ſeemeth that by theſe words he ſhall have an eſtate but for his life; for in perpetuũ cannot extend further but unto the deviſee, and there are not more perſons named

named,&c. And the life of a man in this manner is ſaid as unto him in perpetuum,&c. Tamen quære. If the words of the deviſor were To hold,&c. unto the deviſee in fee,without ſaying any more,the deviſee hath an eſtate of inheritance in fee,&c. If Lands be deviſed unto I.S. To hold unto him and his aſſignes, by theſe words the deviſee ſhall have fee; The ſame Law is,if it be deviſed to him and his aſſignes in perpetuum,&c.

558. If a man hath a leaſe for yeares, and deviſeth by his will,that I. his ſonne ſhall have this leaſe, viz. the reſidue of the yeares,unto him and his heires, and the deviſor dieth, and I. hath the Land leſſed which was deviſed unto him by the aſſignement, aſſent or Levy of the Executors(as he ought to have) and maketh his Executors, and dieth within the terme, It is ſaid, that the heire of I. ſhall have the reſidue of the yeares, and not the Executors, becauſe that the poſſeſſion therof continued in the deviſee not altered,and the will of the deviſor is, that his heire ſhall have it; and alſo becauſe the word(heire)in this caſe ſhall be taken as a name of purchaſe,ſo that if the terme continueth at the time of the death of I. who is the deviſee, that then his heire ſhall have the reſidue of the Terme by way of remainder by force of the Deviſe,&c. M.34.H.8.

559. But if a man leaſeth Land unto me for yeares, to have and to hold unto me

me and my heires for yeares, and I make my Executors, and die within the Terme, my Executors shall have the residue of the yeares, and not my heire. Causa patet. And in the principall case, if I. who was the devisee had granted the whole terme unto a stranger, and afterwards died within the terme, It is said by some that the heire shall not have any remedy. And by the like reason they saie, That the Executors of I. shall have the residue of the terme and not the heire: But notwithstanding that the Law be so, yet that doth not prove that the heire of I. shall not have the residue of the Terme: for if Land devisable bee Devised unto me and my heires, &c. And I enter and sell the Land unto a stranger, my heire hath no remedy notwithstanding the Devise, and yet if I doe not sell, nor alien the same but continue the possession thereof, according unto the devise, at the time of my death, my heire shal have it according to the devise.

560. And if a man hath a terme for yeares in Land or, &c. in the right of his wife, and he granteth the whole Terme unto a stranger, and dieth within the Terme, his wife hath no remedy to have the residue of the terme; But if the husband hath not granted the terme unto a stranger, but continueth in possession at the time of his death, and dieth within the terme, his wife shall have the residue of the yeares, &c.

7. lib. 6. 1.

561. If

561. If a man seised in fee of white acre and black acre devisable, and deviseth white acre unto S. To have and to hold to him and the heires of his body begotten, and deviseth black acre unto T. K. To have and to hold in the same manner and forme as I.S. holdeth white acre, by these words T. K. shall have an estate tayle in black acre, and the reason is, because that the will, and the intent of the giver shall be observed; See diverse cases concerning this matter in the Chapters of grants faits, Mutatis mutandis, &c.

562. And as it is said, the will of the devisor shall alwayes be observed, if it be not impossible or much against the Law, and in other speciall Cases, in so much, as if a man seised of Land deviseable leaseth the same land unto a stranger for life and afterwards by his will deviseth the reversion of the same Land unto the stranger in fee, and dieth, it is a good devise without attornement; The same Law is, of a rent devisable, &c. 34.H.6.7. per Litletō

563. If a man seised of Land devisable in fee, deviseth the same unto I.S. Clarke, upon condition that hee shall be a chaplein, and shall sing for the soule of the devisor all his life, and that after his decease the Land shall remaine unto T. S. Maior of S. and his successors, to finde a Chaplein perpetually for to sing for the soule of the devisor, and the devisor dieth, and I.S. being of the age of 24 yeares en-

treth and holdeth the Land for 6 yeares, and is not a Chaplein, the heire of the deviſor may enter for the condition broken, and yet the remainder ſhall not be defeated, but ſhall take effect after the death of the deviſee for life, Tamen Quære.

564. But if there be leſſee for life, the remainder unto a ſtranger in fee by deed indented upon condition that the leſſee ſhall pay yearely x.s. at the feaſt of Eaſter unto the leſſor and his heires, and after the condition is broken for which the leſſor doth enter, now by his entry the remainder is defeated, becauſe it was all by one deed, and the condition did depend upon the whole eſtate, &c. And the leſſor cannot have a leſſer eſtate when he entreth for the condition broken then he had at the time when hee left the poſſeſſion, &c. No more then a man ſeiſed of Land in fee by matter in deed or in writing can leaſe the ſame Land for life, reſerving unto himſelfe a leſſer eſtate in reverſion, then a fee, &c. And yet in the caſe of a deviſe, the remainder ſhall not be avoided by the entry of the heire for the condition broken, becauſe the will of the deviſor ſhall be obſerved in as much as it may be, &c.

565. And if a man ſeiſed of Land in fee leaſeth the ſame Land for life, the remainder unto a ſtranger in fee, reſerving unto the leſſor and his heires ten.s. rent and if the rent be behind, &c. that the leſ-

ſor,

for and his heires shall enter for the condition broken, and shall retaine the Land during the life of the lesse, and no longer, If the lessor enter for the condition broken in the life of the lessee, and afterwards the lessee dieth, he in the remainder may enter upon the lessor, and have his remainder, &c. And know, that in the principal case, the remainder cannot take effect presently after the condition broke, because the devise was once effectuall in the devisee for life.

566. But if Land be devised for life, the remainder unto a Monck for his life, the remainder unto a stranger in fee, in this case, the last remainder shall take effect presently after the death of the first devisee for life notwithstanding that the Monck be alive, &c. and the reason is, because the remainder never tooke effect in the Monck, and also there is a particular estate, upon which the remainder doth depend, and therefore in this case the remainder in fee shall be good notwithstanding that it was by way of grant, &c.

567. If a man seised of Land devisable in fee doth devise the same unto a Monck for life, the remainder unto a stranger in fee, and the devisor dieth the Monck being alive, In this Case, the remainder shall take effect presently, because the monck tooke nothing by the devise, and notwithstanding that there be not any particular estate upon which the

remainder doth depend, yet the remain
der is good, for that the will of the deviſe
ſhall be obſerved in as much as it ma
be, &c.

568. But if a leaſe of Land be mad
unto a Monck for life the remainder un
to a ſtranger in fee, this remainder i
9.li.6.14. void, &c. If Land be deviſed unto I. S. fo
3.li.6.47. life, the remainder unto T.K. in fee, and
S. dieth before the deviſor dieth, and the
the deviſor dieth, it is a good remainder t
T.K. and ſhall preſently take effect, &c.

569. If a man ſeiſed of Land deviſa
ble in fee doe deviſe the ſame Land unt
I. his Sonne in taile, the remainder unt
a ſtranger in fee, and I. entreth into th
Land and ſaith that hee will occupy th
Land as heire, and not by force of the de
viſe; yet notwithſtanding ſuch diſagre
ment hee ſhall be ſeiſed by force of the de
viſe; For his father might have deviſe
the Land unto a ſtranger in fee, and the
ſonne was without remedy, and there
fore if hee will have the Land hee ſhall
take it as his father gave it unto him, fo
otherwiſe it ſhould be at his will and li
berty, whether the will of his father ſhal
be obſerved or not, which the Law will
not ſuffer. But hee may refuſe the poſſe
ſion and not medle with the ſame, and
ſo may diſagree. For a man ſhall not
be compelled to take by a deviſe whether
he will or no. And notwithſtanding that
he had ſo diſagreed to the deviſe, the re
mainder ſhall not bee avoided. And it
ſeemeth

ſcmeth to ſome, that then he in the remainder may enter, and preſently execute the remainder, Tamen Quære. &c.

570. Now is to know, how the deviſees ſhall come by the things deviſed, and as to that, know that for all chattells realls and perſonalls deviſed, if the Executors will not deliver, aſſigne, or pay them unto the deviſees, that they have no other remedy but to ſue for them in the ſpirituall Court, for the Law doth more reſpect the ſoule of the deviſor then the deviſees, and therefore the Law will not ſuffer the deviſees to take their Legacies out of the poſſeſſion of the Executors in deſpite of them, becauſe the Legacies ſhall not be aſſigned, delivered, or paid, untill all the debts of the teſtator be ſatisfied and paid, in ſo much as if the Executors aſſigne, deliver, or pay the Legacies, before the debts of the teſtator are paid, and there be not ſufficient goods of the teſtator to pay his debts, the Executors ſhall be charged of their owne goods, &c. 20.E.4.3. 2.H.6.15.

571. And it is to know, that if the Executors will, that they may uſe ſuch deceite that the Legacies ſhall never be aſſigned delivered or paid notwithſtanding that they have goods in their hands of the teſtators of the value of one thouſand pounds over and above the debts and Legacies of the deviſor, &c. For they may cauſe ſtrangers to bring actions of debts againſt them as Executors upon

false obligations, &c. And so they may alwayes plead, when the deuisees demand or sue them for their legacies in the Spirituall Court, that the debts of the testator are not paid, and that there are more suits against them, then the goods of the testator are sufficient to satisfie or pay: and by such couene they may defraude the deuisees of their Legacies; And the Executors may, or one of them may, by couene confesse the plaintiffs action, and Execution made be sued against them by couene, &c. Or otherwise they may deny the Obligations, by pleading that they were not the deede of the deuisor, &c. And they may giue such euidence, that it shalbe found against thē, &c. And by such deceit, and diuerse other couenous meanes, the deuisees may be defrauded of their Legacies, for such deceits may be so secretly done, that they shall not be intended Couenous. And therefore it shal be well for such Deuisors to deliuer such things, or cause them to be giuen or deliuered vnto them in their liue times, and not to giue them by way of Legacy, and the same is a good & sure way to execute their intents. And diuerse other good, and sure meanes there are, &c.

1 Ri. 3. 572. But if a man maketh two Executors, and by his will giueth 20 l. to one of them, hee may take his Legacy without the assent of his Coexecutor, notwithstanding that hee hath not administred before, &c. If the testator hath 1. and

for

for the terme of 11 yeares, and hee deuiseth the same Land vnto one of his Executors, he may enter, and occupy the Land according to the deuise without the assent of the other Executors, &c.

573. If the Testator haue Lands for the terme of 20 yeares, and deuiseth the Land for parcell of the yeares vnto one of his Executors, the remainder vnto a stranger, if the Executor who is the deuisee doth enter, and occupy same, by force of the deuise after the yeares determined, The stranger who is the Deuisee in remainder may enter, and occupy the Land during the residue of the yeares, if the other goods of the Testator were sufficient to satisfie, and pay all the testators debts. Quere, if the goods of the Testator be not sufficient to satisfie, and pay his debts; But it it seemeth he may enter notwithstanding that because the deuise was once executed, &c.

574. But if the testator had deuised parcell of the yeares vnto all the Executors, &c. The stranger who is remainder shall not enter, nor occupy without the assignement of the Executors, because it cannot appeare whether they occupy the Land as Executors, or as deuisees. And therefore it shall be taken, that they occupy as Executors, and not as deuisees, for that is more for the benefit, and profit of the soule of the testator. Tamen Quere, how they shall bee adiudged in the Land in such case, &c.

575. If

575. If a man hath Land for terme of yeares, and maketh his will, and deuiseth the same Land vnto Alice the wife of I.S. and maketh the same I.S. his Executor and dieth, and I.S. entreth into the Land, and occupieth the same, but it doth not appeare whether he occupieth the same as Executor, or in the right of his wife, and I.S. maketh his will, but saith nothing of the terme in his will, and maketh T.K. his Executor, and dieth within the terme, it seemeth that the wife who was deuisee cannot enter in the Land deuised vnto her without the assignment or assent of the Executor of her husband. Tamen Quære.

576. And to come vnto freehold, or inheritance deuised, know, that the Ordinary cannot intermeddle therewith, for such estates doe not appertaine vnto the Executors if a deuise of them had not beene made. And it is to know, that sometimes a man cannot enter into a freehold, or inheritance deuised vnto him, without assignement or liuery thereof made vnto him.

577. And therefore it was vsed within the City of London in the time of King Ed. 3. If a deuise had beene made of tenements in London for life, in tayle, or in fee, &c. the will as to the same ought to haue beene proued in the Guild-Hall of the City, and when it was proued, seisin was giuen thereof, And if in such case the deuisee had entred of his owne head without

without livery or assignement, the heire might have had an assise of Mortdauncestor against him. And the same Law was for tenements in Oxford deuised in fee, in taile, or for life, Mutatis mutandis, which wills so proued, and proclamations thereupon had, bynde all manner of persons as strongly as a fine, which proclamation if they die not, make their claime vnto the same tenements within one yeare after the proclamations made. And so know that of freehold and inheritance deuisable, it shal be alwayes according to the custom, if it be reasonable, &c.

578. But of freehold and inheritance deuisable whereof such a custome to proue the will was not vsed, nor any other custome, but only that they are deuisable. In such cases the deuisees after the death of the deuiser may enter without any assignement, if the deuise be of Land or a house whereof their estate ought by the deuise to be presently executed.

579. And when freehold or inheritance of Lands, tenements, &c. which are at the common Law, or in vse, are deuised by cestuy que vse, by his will, the deuise is good notwithstanding that the will be neuer proued, because the ordinary hath not to doe with freehold or inheritance. And in such cases the deuisees thereof, may make a feoffment, graunt, lease, release or confirmation, as the case shall require, by force of the Statute of 27. H. 8. Cap. 1. But it is to know that nothing 15.H.7.12

shall

ſhall paſſe by the deviſe of Ceſtuy que uſe, but that which may lawfully paſſe from him.

580. And therefore if a man ſeiſed of Land doth thereof enfeoffe I. S. unto the uſe of T. K. and Alice his wife, and unto the heires of T. K. and T. K. deviſeth the ſame Land by his will unto a ſtranger in fee, and dieth, living the wife, That in this caſe the wife ſhall have the uſe of the whole Land during her life, notwithſtanding the deviſe of her Husband. Cauſa patet, &c.

Chapter. 9.

CHAPTER 9th.

Surrenders.

581. NOw is to speake of Surrenders, and first what things may not be surrendred by deed, and what may. And as to that, Know, that where a iust grant, or other thing cannot take effect without a deed, such estate or thing cannot be surrendred without deede if not that it be in speciall cases.

582. And therefore if a man seised of rent service, rent chardge, rent seck, common for yeares, or, &c. in fee, &c. and grant the same for life or for yeares, by deed (as he ought) the grantee cannot surender the same without deed.

583. But if lessee for life be of Land, or of a house, and the grantor graunt the reversion unto a stranger for life, and the lessee attorne, the grant is veid if it be not by deed. And yet if the lessee dieth, and the grantee entreth into the Land, he may surrender the same without deed, & out of the Land, if the surrender be made within the County where the Land is: But if the surrender bee made in another County, it ought to be by deed, &c. And lessee for life of Land, or of a house upon condition by deed indented, may surrender his estate without deed. The same Law is of lessee for yeares &c. 584 Now

19. H. 6. Sur. 1.
14 H. 7. 3
12. E. 3. Sur. 26.

584. Now is to shew, what estates may be surrendred, and unto what persons they may be surrendred, &c. And it is to know, that particular estates, as for life, or for yeares, may be surrendred unto him who hath the immediate remainder, or reversion unto the particular estate in his owne right, if the estate in remainder or in reversion be such an estate wherein the particular estate may be drowned, if not that hee who surrendreth have not a joynt estate in the freehold, or in the terme for yeares, with him unto whom the surrender is made; and in other speciall cases, &c.

11.13.11.4. Sur.10. 585. And estates in fee of some things issuing out of Lands, may be determined by the surrender of the deed unto the tenant of the Land, by which deed it was granted, &c. And it hath been holden that an estate in fee of Lands, or Tenements, may be surrendred by the tenant unto his Lord, who hath cause to have an action of Cessevit of the same Lord, Quære. But it is cleere, that tenant in fee simple at the will of the Lord according to the custome of the manor, may surrender according unto the custome of the manor, &c.

11. 11. 6. Sur. 6. 586. If a man doth enfeoffe I. S. and T. K. of certaine Land, to have and to hold unto them and unto the heires of T. K. and I. S. surrendreth his estate unto T. K. it is a void surrender notwithstanding that I. S. had that freehold and T. K. had a

fe

fee expectant to be executed in possession immediatly after the death of I. S And the reason is because that T.K. had a joynt possession in the freehold which I.S. and every joynt tenant is seised of the whole, so that the surrender cannot be the cause, that hee hath the possession of any part of the Land; and also his estate cannot drown in the estate of T.K. for either of them hath an estate of freehold in possession in and through the whole Land.

587. If I.S.S.K. and D.C. be joynt feoffees of Lands, to have and to hold unto them and unto the heires of T.K. And afterwards I.S. doth release all his right unto D. C. and afterwards, D. C. doth surrender unto T. K. &c, it is a good surrender for the third part of the Land, &c.

588. If a Lease for life bee made of Land, the remainder unto a stranger for life, the remainder unto another stranger in tayle, and the lessee doth surrender unto him in the remainder in tayle, or unto his lessor who hath the fee in reversiõ leaving him in the remainder for life, This surrender is void, to take effect as a surrender, because that hee unto whom the surrender is made hath not the immediate estate in remainder unto him that maketh the surrender. But if hee who made the surrender had but an estate for yeares and in the surrender, there be words which amount unto a grant of his estate, then the surrender shall take the same

same by way of graunt of his estate, &c.

589 If a lease for life be of land, the remainder of the same land unto a stranger for yeares, and the lessee for life doth surrender his estate unto him in the remainder for yeares, it cannot take effect as a surrender, because that an estate for life cannot drown in an estate for yeares.

590 If Donee in taile of a rent, &c. surrender his estate unto his donor who hath the reversion of the same land in fee, it is a void surrender: but if lessee for life be of land, the remainder unto a stranger for life, and the lessee doth surrender unto him in the remainder, it is a good surrender: for he unto whom the surrender is made, hath an estate for his owne life in remainder, and an estate for a mans owne life, is a higher estate of freehold unto him, then the estate for the life of another man is: in the same manner as it is of land, shall it be of all rents, commons, corodies, &c. mutatis, mutandis, &c. 32 H. 7. 11.

591 And it is to know, that if I. S. be seised of the Mannor of Dale in fee, and graunteth a rent issuing out of the same mannor, or a common, or any other thing in fee, if the grauntee doth surrender the deed by which the said rent, or, &c. was graunted unto him, either unto the grauntor, or unto any other person being tenant of the same mannor: notwithstanding that the tenant of the mannor be with diverse others jointly seise

of the same manno; , and notwithstanding that he hath not but an estate for yeares in the same manno; in remainder ; by the surrender of this deed unto him, the rent, o;, &c. is determined and extinct.

592 But if the grauntee had recited by another deed, how a rent charge was granted unto him , and reciting in the same deed all the effect of the graunt, graunt the same rent unto the lessor for life of the manno; , to have and to hold unto him and his heires, and surrenderth unto him the deed by which the graunt was made unto him , and at the same time deliver his deed of graunt unto the lessor, the same shall not enure no; take effect to determine and extinguish the rent ; but shall take effect by way of graunt , to take effect after the death of the grauntee. For at the time of the graunt made unto him, he had possession and seisin for his life of the manno; out of which the rent was issuing, so that the graunt could not take effect in him presently , but notwithstanding that, the graunt shall take effect in his heire , if some other act bee not done to hinder the same. As if the lessor graunt the same rent unto a stranger, o; otherwise purchaseth the reversion of the manno; out of which the rent is issuing, so as the fee of the manno; is executed in him, &c. O; if the lessor in the same case enfeoffe a stranger of the manno; , and the lessor

entreth for a forfeiture, the rent is determined and extinguished, because that the lesse had the fee of the rent at the time of the feoffement, to grant or to forfeit, &c. And by the feoffement he departed with the land in fee discharged of the rent, so that by this feoffement the rent is determined and extinguished, &c.

593 But if the lesse of the manor after the purchase of the rent commit waste in the whole manor, or in parcell thereof, for which the lessor doth recover in an action of waste; yet the lesse shall not have this rent during his life: But Quære, if the lesse after the purchase of the rent, and before any waste done, grant the rent unto a stranger, and afterwards doth commit waste, if the grantee shall have the rent against the feoffer during the life of the lesse, &c.

594 But if a man be seised of a rent charge in fee, issuing out of a manor, or other land, and the tenant of the rent, or of the land is disseised, and the grantee of the rent doth surrender his deed of graunt unto the disseisee; It seemeth the same is no determination of the rent at this time; And yet the disseisee is tenant unto the Lord, as to avow upon him. But if the disseisee doth reenter, then it seemeth the rent is determined and extinguished, if he hath the deed of the graunt of the rent in his possession by force of the surrender of the same deed, &c.

595 If a man seised of land in fee, graunteth

graunteth a rent charge out of the same land in fee, and the graunto2 dieth without heire, and before any entry made into the land by the Lord o2 any other person, the graunte doth surrender his deed of graunt unto the Lord. Quere, if the rent be immediately determined and extinguished, because that the Lord had but a possession in law in the land out of which the rent was issuing at the time of the surrender made; yet it seemeth the rent is immediately extinguished, &c.

596 But if a man who is tenant in taile of such a rent o2 common, &c. surrendreth his deed of graunt unto his grannter, o2 unto another who is tenant of the land out of which the rent is issuing, it shall not extinguish the rent, o2, &c. Causa patet.

597 But if the graunte of a rent charge in fee graunt the same rent in fee unto him who is seised of the land out of which the rent is issuing in fee, the same shall enure and take effect to determine and extinguish the rent; as it appeareth in the Chapter of Graunts, &c.

598 If tenant in taile doth discontinue the taile in fee and dyeth; and the issue in taile bringeth a Formedon against the discontinuee, and pendant the suit sheweth the deed of entaile unto the tenant in the county, and the tenant seeing the deed, doth surrender unto him, &c. the same is no good surrender.

599 And notwithstanding that some

particular eſtates may be ſurrendred in manner and forme as is aforeſaid, yet it behoveth that he that doth ſurrender be ſeiſed or poſſeſſed of ſuch eſtate at the time of the ſurrender; otherwiſe ſuch ſurrender ſhall not be good, if not that it be in ſpeciall caſes.

600 And therefore if leſſee for life, or for yeares of land, be ouſted of the land by a ſtranger, and after the ouſter, and before his entry, he doth ſurrender unto his leſſor, it is no good ſurrender, becauſe he hath but a right at the time of the ſurrender, &c. And therefore if a woman hath title to have dower by the common Law, and ſhe doth ſurrender unto him againſt whom ſhe ought to have dower, it is a void ſurrender.

601 If a leaſe for ten yeares be made to begin at the feaſt of S. Michael the Arkangell next after the leaſe, and before the feaſt of S. Michael, the leſſee doth ſurrender unto his leſſor, it is no good ſurrender, yet he might have be graunted the ſame before the ſaid feaſt of S. Michael. But the ſurrender is not good, becauſe that the leſſee is not in ſeiſin and poſſeſſion legall of the thing leaſed before the feaſt of S. Michael come, &c.

602 And a releaſe made by the leſſee unto the leſſee before the Terme doth begin is void, and notwithſtanding that the leſſee before the Terme doth begin do enter into the thing leaſed unto him, and do an act which amounteth into waſte,

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the lessor shall not have an action of wast for the same. And if the lessee after the terme begun, and before he doth enter by force of the lease, doth surrender unto his lessor, it seemeth to be a void surrender, if any other person be in possession of the thing leased at the time of the surrender, if not that he hath parcell of the terme of the lessee, by force of the graunt of the lessee, &c.

603 If a man seised of land do lease the same for ten yeares to begin presently, and the lessor wayveth the possession, and before any entry made into the same land by any person, the lessee doth surrender his estate unto his lessor, it is a good surrender, and yet the lessee shall not have an action of trespasse, for a trespasse done upon the land before his entry: and also a release made unto him by his lessor is void before his entry, &c.

604 And if there be lessee for ten yeares of land, and hee graunt parcell of the yeares unto a stranger, and the grauntee doth enter, &c. and the lessee doth surrender unto his lessor, it is a good surrender: but if the grauntee of the lessee had surrendred unto the lessor of his graunter before the surrender made by the lessee, the same shall not take effect as a surrender, Cauls case. 4 H. 7. 3.

605 If there be lessee for yeares of land, the remainder of the same land unto a stranger for life, the remainder unto another in fee, and during the yeares, he

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in the remainder for life doth surrender unto him in fee, it is a good surrender: but if in the same case the lessee for years had beene put out of the land by one that had no right, and he who put him out dyeth seised of the same land, and his heir doth enter upon whom the lessee for years doth enter, and then, he in the remainder for life doth surrender unto him in the remainder in fee, the same is a void surrender, because he had but a right to the remainder, and also he unto whom the surrender was made, had but a right of remainder in fee at the time of the surrender, &c.

606 If there be grauntee of a rent charge in fee, and a stranger is purbey of the rent, and the grauntee doth surrender his deed by which the graunt of the rent was made unto the tenant of the land, the same shall determine and extinguish the rent, notwithstanding that the purvancie be made with the assent of the tenant of the land, &c. And it is to know, that there are two manner of surrenders, viz. A surrender in deed, and a surrender in law. And first is to speak of a surrender in deed, and what words make such a surrender.

607 And as unto that, Know, That when the words prove a sufficient assent and will of him who is the particular tenant, that he in the remainder or the reversion shall have the thing which he hath or holdeth, They are words sufficient

ent to make a surrender, if he unto whom the surrender is made do agree thereunto.

608 And therefore if lessee for life or for years of land say unto his lessor, that his will is, that his lessor shall enter into the land which he holdeth for life, or for yeares, and shall have the same, and by force thereof the lessor doth enter into the same, it is a good surrender; and so shall it be, if he say unto his lessor, or unto him in the remainder, or reversion, that hee will that he have the land, and the lessor doth enter by force thereof, or agreeth thereunto, it is a good surrender: But if the lessor, or, &c. doth not enter by force thereof, nor agreeth thereunto the surrender is not good; for he cannot surrender unto him against his will: But if he unto whom the surrender is made doe once agree to the same, he cannot afterwards disagree thereunto. And in the time of King E. 1. The lessor did enter into the land leased for life, with the assent of the lessee, and because it was not in the presence of good men of credit, it was holden to be a void surrender. But the law is otherwise at this day, &c. 40.E.3 24. 6.E.3.7 Temps E. 1. Assize 403.

609 And if the lessee commeth unto him in the remainder or in the reversion, and saith unto him, that he will occupie the land no longer, and he in the remainder by force thereof doth enter, it is a good surrender. And if the lessee doth say unto his lessor, I do surrender unto you

pon the Land which I hold of your leafe, Or if he faid I hold fuch Land, or houſe, &c. and ſheweth certaine the Land or houſe, &c. of your leafe, And I doe ſurrender the ſame Land or houſe, &c. unto you, and the leſſor doth agree thereunto, the ſame is a good ſurrender.

610. And if I.S. holdeth one acre of Land for yeares of the leafe of C.D. and holdeth another acre of Land for life of the leafe of the ſame C.D. And I.S. doth ſay unto C.D. I ſurrender unto you all the Land which I hold of your leafe, it is a good ſurrender for both acres: So ſhall it bee, if hee ſay I ſurrender unto you the Land I hold of your leafe, for inſo much as he doth not expreſſe what Land, it ſhall be taken for all the Land which he holdeth of his leafe, becauſe the ſurrender is his act and deed, and the ſame ſhall be taken ſtrongeſt againſt him, &c. But if he had ſurrendred the Land which he held of his leafe for yeares, he ſhall not have by this ſurrender the Land which he held for his life, ſo ſhall it be converſo, &c.

611. If I hold one acre of Land for life of the leafe of the father of I.S. and I hold one other acre for life or yeares of the leafe of I.S. and I ſurrender unto I.S. the Land which I hold of his leafe, by this ſurrender he ſhall not have the Land which I hold of the leafe of his Father, notwithſtanding that the reverſion of the ſame acre be in him by diſcent from his Father, &c.

612. If

612. If a woman who is tenant in dower taketh a husband, and the husband doth surrender the Land which hee holdeth in the right of his wife for the life of the wife, it is a good surrender during the coverture. And if the Husband dieth before the wife, Or if they be divorced Causa præcontractus, the wife may enter and defeate the surrender, notwithstanding that hee to whom the surrender was made died seised of the Land in his demeasne as of fee, and his heire be in by discent; The same Law is, if the Surrender be made by the Husband, and wife, &c.

613. But if a sole woman who is lessee for yeares of Land or a house, &c. taketh a Husband, and the Husband doth Surrender the Land, and dieth before the yeares are determined; yet the Surrender shall stand. If a man be seised of land for the life of his wife, in the right of his wife, and he and his wife will Surrender the same Land by fine, the wife shall bee examined, because she giveth by fine; and no particular tenant can Surrender by fine if he be not named in the writ wherupon the fine shall be levied.

614. A surrender made by an Infant by word of off the Land is not good, in so much as, if he surrender an estate of freehold, and by force hereof he to whom the Surrender is made doth enter, The Infant shall have an assise: The same Law is of a Surrender made by duresse of 15. E. 3. Duresse. 13.

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imprisonment; a Surrender made by a
5.E.4.4. man who is not Compos mentis is good for ever. Tamen quære, &c.

615. If two men seised of Land in fee lease the same Land, unto a stranger for life or for yeares, and he doth Surrender all his estate in the Land unto one of them, the same shall enure unto them both. See the reason thereof in the Capter of Grants, &c. But if the lessee for life hath Surrendred the Lands unto both the lessors, or unto one of them for 20. yeares the same shall not take effect by way of Surrender, for then there remaineth an interest in the lessee, which is as a meane remainder betweene the estate which is Surrendred, and their reversion, &c. In the same manner as it is of Surrender of Land, so shall it be of surrenders of deeds, or of any other things, Mutatis mutandis, &c.

616. If a man seised of Land, lease the same Land for life, and granteth the remainder unto a stranger for life, And the lessee for life granteth his estate unto him in the remainder for life, the Law saith that this shall enure by way of Sur-
14.H.8.15 render, So shall it be, if the lessee for life doth enfeoffe him in the remainder for life, The same Law is, if a man seised of Land in fee leaseth the same for life, and the lessee doth thereof enfeoffe his lessor, &c.

617. If lessee for 10. yeares of Land, doth take a new lease of the same Land of

of his lessor for 20 yeares, it is a Surrender of the first lease, &c. But if lessee for life or yeares of a house, and Land, doe remove his goods, and chattells out of the house and land, by reason of the greatnesse of the rent, or because he is behind in his rent, or for any other cause, and the lessor doth enter into the house and land, this is no Surrender, for it doth not appeare that the will of the lessee is, that his lessor shall have the house and Land, but that he wayveth the possession for his own advantage.

1 Ass p. 20. T. 8. E. 3. 46.

618. If lessee for life of land grant his estate unto him in the reversion, and unto two other men; it is a Surrender for no part. And yet if there be Lord, and tenant by fealty and rii d. And the Lord grant his seignory unto the Tenant, and a stranger in fee the moyty of the rent shall be extinguished in the tenancy, for it should be inconvenient, that the Tenant should have rent issuing out of his owne Land, unto his owne use; and the other moyty of the rent with the Fealty the grauntee shall have the same, &c.

M. 7. H. 6. 3. P. 34. H. 6. 45.

619. But when lessee for life of Land granteth his estate unto him in the reversion, and unto two others, he alone hath not interest, and estate in the freehold, but he hath a joynt estate with others in the Freehold, so that if they survive they shall have the whole Freehold by the survivorship; And also hee in the reversion had nothing in the Freehold before

fore the grant, And it is not impertinent but that he in the reversion may take livery of seisin and estate in the same Freehold for the advantage of another person. And if lessee for life be the remainder for life, and the lessee for life doth commit wast, this wast is dispunishable at this time for the advantage of him in the remainder for life, &c. See other reasons concerning this matter in the Chapter of Grants, &c.

30.E.3.3.

620. If lessee for life grant his estate unto him in the reversion, the remainder unto a stranger in fee. It seemeth the remainder is void, because that when he in the reversion alone is to take the whole, and all the estate which was out of him, and no more, and he hath the reversion in his own right, It shall be hard that he shall take by livery of seisin; And so it seemeth that the grant shal enure by way of Surrender, and that the remainder is void, Tamen quære, because that the livery of seisin is made upon the whole deed, and by the same deed, the remainder is granted unto the stranger; and so it is unto the profit, and benefit of the stranger &c. But if lessee for life of Land lease the same land unto him in the reversion for life, the remainder unto a stranger in Fee, the same is no Surrender, Causa patet.

7.H.6.4

M.39.E.3.29.

621. If there be lessee for life of land, the remainder in taile unto a stranger, the remainder over in taile unto another man,

41.E.3.29.
41.Ass.p.2.

man, the remainder unto the right heires of the lesse, and the lesse doth thereof enfeoffe him in the first remainder in taile, and his wife in fee, and the husband dieth without issue living the lesse, and he in the second remainder doth enter and put out the wife, she shall have an assise because shee shall have the Land during the life of the lesse who was her feoffer. Tamen quære. And if he in the second remainder in taile dieth without issue, living the wife, then he shall retaine the Land unto him, and his heires for ever, &c.

622. If a sole woman seised of Land in fee leaseth the same unto a stranger for life, and taketh a husband, and the lesse doth grant his estate unto the husband, this is no Surrender; And yet the husband is seised of the reversion in fee which is immediate unto the estate of the lesse, viz in the right of his wife, and not in his own right, &c.

623. If lesse for life be of Land, the reversion unto two coparceners, and one of them taketh a husband. And the lesse granteth his estate unto her and her husband, this is no Surrender; But if tenant in Dower be of Lands, and she grant her estate unto him in the reversion reserving Rent, and the grantee taketh a wife, and dieth, his wife shall have Dower; Which groweth that the grant doth enure by way of Surrender: And yet the reservation shall be good if it be by

7 H. 7. 14. P. 41 E. 3. 3.

by deed indented, to take effect by way of grant, &c. But the Tenant in dower shall not distreyne for the rent because she had no reversion, And no clause of distresse is in the deed; And shee shall not have an action of debt because she hath an estate of Freehold in the Rent; but she shall have the same as a Rent secke; more shall be said of this in the Chapter of reservations.

7.E.4.34. 624. And it is to know, that a Surrender of a freehold made by deed indented upon condition is good, and if the Surrender be of an estate for yeares in Land, then the Surrender may be upon condition without deed: And if a Surrender be made of the Freehold by deed indented upon condition, that if he to whom the Surrender is made, doe not goe unto Yorke within one moneth next following the date of the Surrender, That then it shall be lawfull for him who made the surrender to reenter into the Land, the same is a good Surrender upon condition.

CHAPTER 10th.

Reservations.

625 NOw is to speake of Reservations. And as to that; Know, That there are many words by which a man may reserve unto himselfe that which was not in him before, and abridge the tenure of that which was in him before, viz. Tenendum, Reservandum, Reddendum, Solvendum, Faciendum, and other the like, And there are divers words by which a man cannot properly reserve any thing, but those which were in him before, viz. Exceptis, Reservatis, præter salvis and other the like, &c.

626. And therefore if a man be seised in Fee, of one acre of Land; he may let the same acre for life, to hold of him by fealty, and 10 s. Rent, and if the fealty or the Rent be behind, he may distrein, and yet the same was in Esse before; for the reason thereof in the Booke of Sir Littleton, in the Chapter of Rents, and there many good Cases concerning Reservations. And it is know, that a Reservation ought to be out of such a thing unto which a man may resort for to take a distresse, as out of Land, or a House: and not out of a Rent, &c. if not that the Reservation be made by our soveraigne Lord

M. 21. E. 3. 49.

Lord the King, of whose title I will not speake.

627. But if there be Lord, Mesne and Tenant, and the Mesne giveth the meanalty in taile, reserving fealty, and rent, this is a good reservation, because the tenancy may come unto the Donee: But the Donor nor his here shall not distraine for the fealty, nor the Rent, notwithstanding that they be behind, before the tenancy be come unto the Donee, And then he shal distreine for all the arrerages from the time of the guift, and the donee shall not avoid the same.

F. 12. E. 4. 11. 628. If there be Lord, and Tenant by Fealty, and ii d. And the Lord release, or confirme the estate of the Tenant, to hold of him by 1 d. the same is good, M. 8. E. 4. 8. and yet he held of the Lord by this 1 d. and more before, &c. And if a man seised of Land, doth give the same in taile reserving rii d. the same is a good reservation, by the word Reservandum

629. If there be Lord, and Tenant by Fealty and rii. d. And the Lord doth release all his right unto the Tenant, Or confirmeth the estate of the Tenant, reserving unto him 1 d. it is good, yet it F. 44. E. 3. 11. was in use before, &c. And if the Husband and wife grant, and render a manor for terme of life by fine, rendering the first yeare 1. d. and for 6. yeares then nert following every yeare a Rose at the Feast of Easter, And after the 6 yeares every yeare 10 l. in money with clause

of distresse; This fine shall be received: But a fine with clause of reentry shall not be received, because that then the estate should be defeisable, which is against the nature of a fine, &c. For finis finem litibus imponit, &c.

630. If a man seised of Land, leaseth the same for life, rendring for the first 6. yeares 3. quarters of wheate, and if hee held over, &c. yeilding 5 l. by the yeare this is a good Reservation by this word Reddendum, &c M. 12 E. 3. Exec. 6.

631. If there be Lord and tenant by knights service, and 20 s. Rent, and the Lord confirme the estate of the Tenant rendring unto him onely homage, fealtie, & escuage when it shall be assessed by parliament unto 40 s. 40 s. and when it is lesse, lesse, by this confirmation the 20 s. rent is determined, & yet this word (Reddendum) is more properly the word of the confirmer then of the confirmee, &c.

632. And if a man seised of Land, leaseth the same for life, or giveth it in tayle, Solvendum sibi & hæredi. suis annuatim 20 d. it is a good Reservation. And if there be Lord and Tenant by Fealty and vii d. And the Lord doe confirme the estate of the Tenant, Ad solvendum sibi 1 d. the same is good. And if a man seised of Land leaseth the same for life, or giveth the same in tayle unto a stranger, Pro homagio suo faciendo, it is a good Reservation, &c.

633. If there be Lord and tenant by

Fealty, and xii. d. and the Lord doth confirme the estate of the Tenant Ad faciendum sibi fidelitatem tantum, it is a good confirmation, and by the same the Rent shall be determined, &c. And it is to know, That every thing which is reserved by any of the words aforesaid, ought to be within the purport of the same words, otherwise the reservation is not good, if not that it be in speciall cases, &c.

12. H. 3. 3. ad. 151.

13. R. 2. Adowry 89

P. 49. E. 3 10.

634. If there be Lord, and Tenant by Knights service, and the Tenant giveth the Tenancy in taile Faciendum forinsecum servicium quantum ad eandem terram pertinet. By these words the donee shall hold of the Donor by Knights service, &c.

635. If there be Lord and Tenant by Knights service, and the Tenant before the statute of West. 3. called Quia emptores terrarum lex a fine of the Tenancy upon a grant, and render unto C. D. Reddendum inde ad festum Nativitat. Sancti Johannis Baptistæ annuatim id. Pro omnibus serviciis secularibus & demandis, Et faciendum capitalibus Dominis feodi illius predict; The Tenant who levieth the fine Hered. & assign. suis omnia servicia debita, & consueta; In this Case the conusee holdeth of the conusor by Knights service, notwithstanding that he doth expresse that hee shall doe the services Capitalibus Dominis, for by these words on this case hee shall not hold De capitali. Dom. because there is a tenure before expresse

M. 2. E. 3. 33.

preſſed in the fine, viz. by theſe words Reddendum inde annuatim ad feſtum, &c. which words make a tenure of the conuſee, ſo that if he ſhall hold De Capitali Dom. then he ſhould hold the Land of two ſeverall Lords, the which the Law will not ſuffer in this caſe. But if theſe words were not in the note of the fine, viz. Reddendum inde ad feſtum Sancti Johannis Baptiſtæ annuatim id. Pro omnibus ſervicijs ſeculatibus & demandis, Then by the other words the conuſee ought to hold of the Lord Paramount by the like ſervices, as the conuſor held, &c.

636. Two joynt tenants of Land, or conuſes, &c. by a ſpeciall meanes may hold by ſeverall ſervices, As yet the Caſe, there be Lord and two joynt tenants of two acres of Land by Fealty and xii. d. one of them at this day doth enfeoffe a ſtranger of that which doth belong unto him upõ condition. In this caſe the feoffee ſhall hold of the Lord by Fealty and xii. d. And if the Lord grant unto a ſtranger the ſervice of the feoffee, and the feoffee doth attorne, and afterwards the condition be broken, and the feoffor entreth: in this caſe the feoffor, and the other joynt tenants, are joynt tenants as they were before the feofment made, and yet they hold by ſeverall ſervices, and of ſeverall Lords, but not the ſame Land, for one joynt tenant holdeth one moity of one Lord, the other moity of the other Lord, and the other joynt tenant holdeth, &c.

637. If there be Lord and Tenant, and the tenant at this day doth give the tenancy in taile, Tenendum de Capitali Dom. this Tenendum is void, because that the Law hath made a tenure betwixt the Donor, and the Donee, &c. And then if the Tenendum should be good he should hold the same Land of two Lords which the Law will not suffer; if not that it be by matter of conclusion, &c.

638. If a man be seised of a manner in fee in which manor there is a Mill for the grinding of Wheate, and other graine, and before the Statute Quia emptores terrarum, hee doth enfeoffe certaine tenants of the manor of parcell of the manor, doing suit at his Mill, this is a good tenure by the word. (doing) And it is said if the feoffor leaseth the manor unto a stranger for life rendring unto him 40. s. For the manner, and 30.s. for the multure, and the tenants the manner attorne unto the lessee, the the 30.s. are a rent charge issuing out of the whole manor, &c.

9. Ass. p. 14
M. 9. E. 3. 3.

639. And it is to know, that the words Exceptis, & præter, are alwayes such things which the Feoffor, Donor, Graunter, Lessor, Releasor, or Confirmor have in possession at the time of the Feoffment, guift, grant, Lease, Release and confirmation: And therefore if a man seised of Land, leaseth the same Land for life, Exceptis vii. d. or Præter vii. d. it is a good Reservation, Causa patet, &c.

640. If

640. But if a man seised of Land in fee, leaseth the same for life, Reservatis sibi inde xii.d. this is as well as if he had said, Reservando sibi inde xii. d. For there is not any difference, but one sentence ponitur absolutè, and the other Ponitur gerundive.

641. But if a man be seised of foure acres of Land, and of a house within the Towne of Dale wherein is a Chamber, and doth enfeoffe a stranger by deed of all his Land, and Tenements which he hath in the Towne of Dale Excepto, or reservato sibi, the Chamber, or Prater the Chamber, and sheweth the certainty thereof, in that case the Chamber shall not passe by the feoffment, &c.

642. If a man seised of a manno: leaseth the same manno: by deed indented unto a stranger for life, Exceptis & reservatis to the lessor Omnibus grossis arboribus in dicto manerio crescent. By this Lease the great Trees shall not passe. T. 22 E. 3. 8.

643. And if a man seised of a manno: doth lease the same manno: by deed indented for life, Exceptis & reservatis quod benè liceat, to the lessor, Succidere dare & vendere omnes grossas arbores in dicto Manerio crescentes, &c. Quære, if the great Trees shall passe by the Lease, &c. A man seised of a manno: unto which an Advowson is appendant, doth thereof enfeoffes a stranger, Exceptis, reservatis, &c. or Prater one acre and name the acre, and the Advowson, this is a good excep- 3. H. 6. 46. 5 E. 3. 66.

tion, and the acre, nor the Advowson, shall not passe by the feoffment; And the Advowson shall be perpendant unto the acre which is reserved, &c.

644. If a man hath a Rent charge in fee issuing out of Land, and by fine he doth release unto the Tenant of the land, all the right which he hath unto the Land (reservat. Excep. & praeter) the Rent, it is a void exception. And so it is of a grant confirmation, &c. Mutatis mutandis, &c.

16. E. 3. Fitz. 8. And if a man sell a wood except 20 Okes and thereth which in certaine, it is a good exception.

645. And it is to know that this word (salvo) shall be a good exception of such things which are in the possession of the feoffor, Donor, &c. At the time of the feoffment, guift, &c. And also this word (Salvo) giveth a new thing unto the feoffor or Donor which was not in him before, &c.

646. If a man be seised of a water in which he hath a fishing from the Towne of Dal in the County of Middellex, unto the Towne of Sale in the same County, and upon the same water he hath a Mill, and hee doth grant unto a stranger Totam partem piscariæ suæ de D. quam proc. cul terr. inde extendant, Ita quod nec ipse, nec hæredes sui, nec molendinarii de cetero cum retibus nec aliis ingen. piscar. Salvo tamen Regno molendini, this exception shal not put off the grauntee of the piscarie in the same poole, and this (Salvo)

34. Ass. p. 11.

(salvo) shall have relation, onely for the repairing of the Mill, and to doe such things as are necessary unto the Mill, &c. But if I grant common unto a stranger, for all manner of cattell within my manor of Dale saving in one acre, and name the acre, the grantee shall have common in that acre, &c.

647. If there be Lord, and tenant by fealty and rii.d. rent, and the Lord doth release all his right unto the tenant, saving to him his rent, it is a good reservation, And the Lord shall have the rent in the same nature as hee had it before. Vid. E. 4. 11. 29. Ass. p. 29.

648. If there be Lord and tenant by knights service. viz. by homage, fealty, and escuage, and rii. d. Rent, and the Lord doth grant the rent unto a stranger saving unto him his seignory; it is a good saving. But notwithstanding that the Lord shall have the escuage, and yet it is not but a payment of money if the tenant will: and the grantee shall have the rii.d rent as a rent seek, &c. M. 2. H. 3. 89.

649. If a man hath a Parsonage, and a Vicarage unto the same Church, and of one Advowson. And by fine he granteth unto a stranger the Advowson of the same Church, saving unto the graunter, and his heires, the presentation unto the vicarage, it is a good saving, &c.

650. If there be Lord and tenant by knights service, and the tenant doth give the tenancy in taile to hold of him by

1.d. for all services Salvo forinseco servicio In this case, this Salvo shall make the Donee to hold of the Donor by Knights service, and yet the same was not in the Donor before, but the Donee was chargeable with Knights service for the same Land, unto him of whom hee held it. Forinsecum servicium is such service by which the Donor held the same Land, which hee gave, &c. See diverse good Cases concerning reservation of Deedes in the Chapters of Deedes, and conditions, &c.

3°. Ass. p. 20.
28. Ass. p. 65.
27 Ass. p. 82.

651. Now is to shew what persons may by their reservations make a tenure. And unto what persons they may make such tenure, and then what things may be reserved to make a tenure; And when the heires of him unto whom the Reservation is made shall have the things reserved. And then something shall be said when the Reservation of collaterall things, which cannot make a tenure shall be good and when not, &c. And it is to know that before the Statute of Quia emptores terrarum, That hee who made an estate unto another in Lands, or Houses, might make a Reservation upon the same estate, according unto the interest which hee departed with, if not that it were in speciall Cases, &c.

652. And therefore if before the Statute of Quia Emptores terrarum, there were two joynt tenants of Lands, or Houses in fee which they held by fealty, and 2.s. Rent,

Rent, or by fealty and a horse, and they enfeoffe a stranger of the Lands or Houses, to hold of one of them by Fealty and rit d. The feoffee shall hold the moity of him by fealty, and rit d. because by the feofment hee did depart but with a moity in right, and yet he shall have the whole Rent which is reserved, notwithstanding that it be a severable Rent, because it is reserved onely to him, and hee may well reserve the same unto him alone, notwithstanding that hee joyned in feofment which his companion, &c. And the feoffee shall hold the other moity of the other joint tenant, to whom the reservation was not made by fealty, and rit d. Rent, And he and his companion shall hold together the whole Land over by 2. s because that then the Rent is severable, and if they themselves hold the same land over by a horse, then it is said, that the feoffee shall hold the moity of him by fealty and a Horse. Tamen Quere, because he was party unto the reservation made unto his companion, &c. But if the joynt tenants had enfeoffed a stranger to hold of both of them, or of one of them, and expressed no services, they are void words and the feoffee shall hold of them, as they held over.

653. If two joynt tenants were of Land, and before the Statute of Quia emptores terrarum, one of them doth enfeoffe a stranger of what thereof belongeth unto him without reserving any thing. The

feoffee

feoffee shall hold of his feoffor by the moity of the services by which the feoffor, & his joynt companion held over, if the hold over by several services, &c. And notwithstanding this feoffment, the feoffor & he who was his joynt companion shall hold the same Land over of their Lord as they held before, so as the advowry of the Lord is not altered by this feoffment. And also the feoffee shall not distrein the cattell of him who was his joynt companion, because he hath an interest in the Land by a more ancient title then his seigneurie began, &c.

564. If before the statute of Quia emptores terrarum, There had been Lord, mesne, and tenant, and the mesne, and the tenant had entermaried, the same should not have altered the Lord advowry, Or if the tenant had enfeoffed the mesne of the tenancy, it should not have altered the advowry of the Lord, &c.

655. If Lord, two joynt tenants mesne, and tenant had beene, and every of them held of the other by fealty, and. rii. And the tenant had enfeoffed one of the joynt tenant, mesnes before the statute of Quia emptores terrarum, of the whole tenancy, it seemeth the feoffee shall hold one moity of the tenancy of him, who was his joynt tenant mesne by fealty, and 6. d. rent: For in as much as his joynt mesne might have granted what belonged unto him of the mesnalty unto a stranger, and his grant should have beene good, which

5. E. 3. 3.

which attornement of the tenant notwithstanding that it were but by matter of writing. And if it were by matter of Record, it should be good without attornment of the tenant, &c. And if the mesne who made the feoffment, before the feoffment had released all his right in the tenantry unto the tenant. by this release the moity of the mesnalty had beene extinguished, and no more. So that notwithstanding this release, his joynt Mesne avow upon the tenant, for the moity of the mesnalty, viz. for fealty and 6.d. So that it appeareth that by the feoffment made unto one mesne, There is but a moity of the mesnalty extinct, viz. the moity which in right doth belong unto the feoffee, and no more, &c. So as for one moity of the tenancy there are Lord mesne and Tenant; And for the other moity of the Tenancy Lord and Tenant.

656. If before the Statute of Quia emptores terrarum, There had beene Father, and two Daughters, and the Father being seised of one acre of Land, enfeoffe therof his eldest daughter to hold of him, and his heire by fealty and 6.d. and the Father dieth, and the seigniory descendeth unto the two Daughters, How the eldest Daughter shall hold of her younger sister by fealty and 6.d. But if the eldest Daughter being seised of one Acre of Land before the Statute of Quia Emptorres terrarum, had thereof enfeoffed her Father,

Father, to hold of her and her heires by fealty and vi. d. and the Father thereof die seised, and the two Daughters enter into the same acre as Daughters, and one heire unto their Father, In this case the eldest Daughter shall not distrein for any Rent, during the time set in possession in common with her sister, But after Proclamation is made betweene her, and her sister, her sister shall hold her part of her by Fealty, and iii. d. &c.

33. Ass. 7. 15.

657. If before the Statute of Quia emptores terrarum, Lord and Tenant had beene of a corne of Land by Knights service, and the tenant had beene disseised of the Land, and the uncle of the tenant had released all his right, which he had in the moity of the tenancy unto the disseisor, and by the same deed of release had bound him, and his heires to warrant the same moity, unto the disseisee and his heires, and the Unckle dieth without issue, and the warranty discendeth upon the disseisee, And the disseisee taketh a wife, and hath issue a sonne, and the disseisor enfeoffeth the sonne of the tenancy, to hold of him by Knights service and afterwards the Father dieth; Now the sonne is remitted unto the moity of the tenancy, and shall hold the same moity by priority &c. and the other moity he shal hold by posteriority, &c.

658. If before the Statute of Quia emptores terrarum, A man being seised of one acre

acre of Land leaseth the same acre unto a stranger for life; and afterwards granteth the reversion for ever unto another stranger, to hold of him and his heires by knights service; this is a good tenure. But the Grantor shall not distreine for the services, during the life of the lesse, &c.

659. And if before the Statute of Quia emptores terrarum. A man seised of one acre of Land leaseth the same acre for life, and afterwards releaseth all his right in the same acre of Land unto the lesse, To have and to hold unto him, and his heires, &c. Or confirmeth the estate of the lesse, to have, and hold the same acre to him, and his heires, to hold of him by knights service, the releasor may distreine for such services, or any of them in the Land whereof the lease, release, or confirmation was made, as often as the same shall be behind, &c.

660. If a man seised of Land in fee in the right of his wife, And before the Statute of Quia emptores terrarum, the Husband alone thereof doth enfeoffe a stranger which out saying more. The feoffee shall hold of the husband by such services, as the husband and his wife held over, for the husband alone did not hold over. But if the husband, and wife had joyned in the feofment to hold of the husband, these words (to hold of the husband) are void. And the feoffee shall hold of the Husband and Wife by such ser-

21.H.6.14.

vices

vices as they held over, in so much that if the Husband dieth, and the Wife after the death of her Husband accept of the services from the feoffee, shee shall not avoid the fesment in a Cui in vita. And if the Husband, and Wife have joyned in the Fesment to hold of the Wife without more saying, the feoffee shall hold of the Husband and Wife, in so much that if the Wife die, the Feoffee shall hold of the Husband untill the Fesment be avoyded by the heire of the Wife in a Cui in vita, &c. And then the heire shall hold of the Lord paramount.

1 Ro. E. 4. 3. 661. If before the Statute of Quia emptores terrarum, two coperceners were of a come of Land in fee, and one of them release all his right, &c. unto his companion reserving rent, it is a good Reservation, because the release as in the part of his release, en le per by force of the release.

662. But if two joynt tenants were of a come of Land in Fee, and before the Statute of Quia Emptores, &c. one of them release all his right in the Land unto his companion, reserving Rent, the same is a void reservation to make a tenure. But if perhaps such release were by deed indented, and word of grant of release, &c. Were compriſed within the release, or onely words of reservation without words of grant, then the lesse shall have the rent reserved as a rent seche: and if the reservation were with words

words of distresse, then the Releasor shall have it as a rent charge.

663. If Lord and tenant are in fee by fealty, and xii.d. and before the Statute, &c. The Lord release unto the tenant all his right in the tenancy, to hold of him by xx.d. it is a void tenure, because that he departed with no estate executed, nor to be executed hereafter by the release upon which hee created the tenure. 17.E.3.69.

664. If before the Statute of Quia Emptores, &c. A man seised of Land in fee doth thereof enfeoffe a stranger to hold of him and his Wife by xx.d. It is a void tenure as unto the wife, and it is a good tenure for the whole rent as to himselfe, &c. And it is said, The reason is because the Wife is a stranger unto the feofment: But notwithstanding that the wife were a party to the feofment, &c. if shee had nothing in the Land whereof the feofment was made, at the time of the feofment, yet the tenure is void as unto the Wife, if it were not by fine, because she departeth with no possession nor estate, &c. But it shall be all the feofment of the Husband: But if the tenure be by fine then it shall be good unto the Wife by way of conclusion, &c. M. 17. H. 4. 1.

665. If a man seised of Land, and before the Statute, &c. doe thereof enfeoffee a stranger, to doe homage and fealty unto another stranger, it is nothing worth, for service cannot be done unto any other then the Lord. And yet the steward

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or other servant of the Lord may receive
21.E.4. 2. fealty for the Lord, &c. But the fealty is
32.E.6.3. made unto the Lord, notwithstanding that he be not present.

666. But if before the Statute, &c. A man being seised of Land in fee doe thereof enfeoffe a stranger, to be butler unto another stranger, or to pay unto a stranger 10 s. yearely at the feast of Easter, or to cover the house of another stranger, this is no tenure in him: whose house shall be covered or, &c. nor hath he any remedy if the feoffee doe not doe the same, but the feoffee holdeth of the feoffor, and if in such case the rent be not paid, &c. the feoffor may distreine, &c.

T.7.E.4. 667. If there were Lord, Mesne, and
11. tenant, and before the Statute, the tea-
12.E.4.5. nant doth enfeoffe a stranger of the tenancy to hold of the Lord paramount, the same is void: But if the feoffment were made to hold of the Mesne, it were good, and hee shall hold of him by the same services, which the feoffor held of the Mesne, But the tenant cannot make a new Tenure betweene his the Mesne, and his feoffee by new services, for to the services reserved the Mesne is a stranger. And if the tenant had enfeoffed a stranger before the Statute, &c. To hold of him, and the Mesne, the feoffee should have holden only of his feoffor.

668. And if the Tenant before the Statute had enfeoffed I.S. To hold of the Mesne, and T.K. the Feoffee should have holden

holden only of the Mesne. If there had beene a woman seignior sole before the Statute, and tenant, and the woman had taken husband, And the Tenant enfeoffeth a stranger, to hold of the husband, it is a void tenure, and the feoffee shall hold of his feoffor, &c. And if there had beene two joint seignors and tenant. And before the Statute the tenant had enfeoffed a stranger to hold of him, and one of the joynt Lords, it is a void tenure, and the feoffee should hold of his feoffer.

669. If Lord and Tenant had beene before the Statute, &c. And the Lord grant his seignory unto a stranger, and the tenant enfeoffed another stranger, to hold of the grantee of the Lord, the same had amounted unto an attornement and also to make a new tenure, and yet the grantee is a stranger unto the reservation of the seignory betweene the grantor, and the tenant. But as to that it may be said, that there is a private by matter in fait, viz. by the grant with the attornement, and so shall be notwithstanding that the Lord had granted the same unto the use of the grantor, &c. And the same Law is where a menalty doth escheate Mutatis mutandis. And if there had beene Lord, and two joynt tenants before the Statute, &c. and they had enfeoffed a stranger, and one of them had assigned the feoffee to hold of the Lord paramount, and the other had assigned the

fealtie to hold of himselfe, &c. the same hath beene good, &c.

670 If Lord and Tenant have beene before the Statute, of two acres of Land, and the tenant doe thereof enfeoffe a Stranger, to hold one acre of the Lord Paramount, and to hold the other acre of him, the same is good, &c. And it is to bee known, that the beginning of a manner was, when the King gave a thousand acres of Lands, or a greater or lesser parcell of Land unto one of his subiects, and his heires, to hold of him and his heires, which tenure is Knights service at the least. And the donee did perhaps build a mansion house upon parcell of the same Land, and of 20. acres parcell of that which remained, or of a greater or lesser parcell before the Statute of Quia Emptores, &c. did enfeoffe a Stranger, to hold of him, and his heires, as of the same mansion house, to plough ten acres of arable Land, parcell of that which remained in his possession, and did enfeoffe another of another parcell, &c. to carry his dung unto the Land, &c. And did enfeoffe another of another parcell thereof, &c. To goe with him to warre against the Scots, &c. And so by continuance of time hee made a manor, &c.

671 And if a man be seised of the manor of Dale in fee, and an other man holdeth him as of his manor of Dale, to repaire the Hall, or other House of the same

same manner, if the house fall and be not reedified by the space of 7 yeares, or for a greater or lesser time: Now for this time the tenant which held by such service is discharged: But when such house is reedified, The tenant is bound to doe the service, if it be not rebuilded longer or larger, so as it shall be more chargable unto the tenant, for to cover the house now, then it was at the time the tenure was created: And if the house be in such manner reedified, Quere if the tenant shall be bounden to cover so much thereof as shall amount unto the length, and breadth what it was when the tenure was created. And if such a House bee throwne down by the Turkes, enemies unto the King, who enter into the Realm with a great Army, for to conquer the same: the Law is as before is said, Mutatis mutandis, &c.

672. But if such a house bee pulled down by neighbours, or by the other men. Or if such a house be burned by negligent keeping of the Neighbours fire, in such case he is not bounden to cover the same when it is builded againe, for the Lord shall recover damages for the same house, unto the value of the house, as it was at the time of the burning, or at the time of the pulling downe thereof, so that the tenant is not bound to make another covering to the same house, then he is to make unto another house burnt, or pulled downe, for if hee should be otherwise

bounden then the Lord should have double satisfaction for the same thing, &c. Quære if such a house fall by the negligence of the Lord himselfe, or with his will, and afterwards be redefied, whether and how the tenant shall be bounden to cover the same house, &c.

673. If a man be seised of the mannor of Dale in fee, and a stranger holdeth of him as of his mannor of Dale, to cover the Kitchin of the same mannor, or other house, Or else hee holdeth of him as of the same mannor to scowre a ditch of the same mannor, Or if he hold of him as of the same mannor by Knights service, or in socage, in such case, if before the statute, &c. a stranger bee enfeoffed of the mannor, and the tenants attorne unto him, hee may avow for all such services: But for such services, viz. for the scouring of a ditch, or for the covering of a house, notwithstanding that he be seised of them, and he distreine for them, and reservations be made, hee shall not have an assise, because they lie only in feasance, but hee may have of them a Præcipe quod faciat, &c.

674. And if before the said Statute, Lord and Tenant have boene of two acres of Land by fealtee, and xii d. Rent, and the tenant had enfeoffed a stranger, of one acre, or of a greater, or lesser part of the tenancy, it was at the liberty of the Lord in what parcel he would distrein for the whole Rent, for by such feofment made

M. 2. E. 4. 16.

made unto a stranger, the Rent was not apportionable by the common Law notwithstanding that the feoffee held of his feoffor: But now by the Statute the feoffee shall hold pro particula illa of the Lord of the feoffor.

975. But if the Tenant leaseth parcell of the same for yeares, or for life, or giveth parcell of the tenancy in frankemariage, or in taile, In that case the Lord Paramount may distraine for all his Rent in every parcell of the tenancy, And the lessee, or donee, is put unto his remedy against his lessor or donor, or him in the reversion. And the reason is, because such lessee or donee doth not hold of the Lord Paramount, &c.

976. If there be Lord and tenant by fealty, and rit. d. and the tenant at this day doth enfeoffe a stranger of the moity of the tenancy, in this case it seemeth unto some, that the rent shall not be apportiond, for these words Per particula illa, shall be intended where the feofment is made of one acre of the tenancy in severalty, or of a greater or lesser part of the tenancy in severalty, Tamen Quære.

977. And if there be Lord and two joint tenants, and one of them alieneth that which belongeth unto him, It seemeth unto them That the Rent shall not be apportioned: But if coperceners make partition, the same shall bee taken by equity, and that before the Statute, so that in that case the rent shall be apor-

tioned. The same Law is, if the Lord exchange parcell of the tenancy in severalty in fee. If the tenant doth enfeoffe the Lord of the moity of the tenancy in severalty the rent is not apportionable by this Statute, but it is apportionable by the Common Law, if the Rent be severable.

678. And if before the Statute, the villeine of the Lord had purchased parcell of the tenancy, and the Lord had entred, &c. Or if the Lord had recovered parcell of the tenancy by false oath, or upon a false title, &c. the Rent was apportionable at the Common Law, if it were severable. And if after the Statute two coparceners were of the tenancy, and they had made partition, the rent was apportionable if it were a rent severable.

679. But by force of these words, Per particula illa. A menalty shall not at this day be apportioned, as put case, there be Lord, two joynt mesnes and tenant, of one acre of Land by fealtie, and vii. d. Rent, and one grant that belongeth unto him of the menalty in fee unto a stranger, and the tenant doth attorne unto the Grantee, the menalty shall not be apportioned, for the words Per particula illa, are intended of the ter-tenant, &c.

680. And the said Statute of Quia Emptores terrarum saith secundum quantitatem terræ that shall be intended the value of the Land, and not the quantity, as perhaps one acre is worth more then another

nother acre by reason of a mine or otherwise, it shal be apportioned according to the value, &c. And if after the apportionment a house built upon the Land fall down, yet it shall bee holden as it was apportioned, &c. So is it if parcell of the Land which is apportioned, be surrounded by tempest. Quere if it be drowned by the Sea in such manner that it cannot be regained by any meanes.

681. And if there be Lord and tenant of two houses by fealty, and 2. s. Rent, and the tenant after the Statute doth enfeoffe a stranger of one of the Houses, the rent is apportioned, and afterwards the house doth fall, or is burnt, yet the rent remaineth, and the Lord may distrein for the same upon the Land, where the house stood, &c.

682. And perhaps a Rent shall bee apportioned, for a time. As perhaps there be Lord, and a woman tenant by Rent severable: and the woman taketh a husband, and the husband doth distreine parcell of the tenancy in severalty in fee, and the Rent is apportioned, and the husband dieth, and the wife doth recontinue this parcell, which was discontinued by her husband in a Cui in vita, brought against the feoffee, Now this apportionment is defeated, and determined, &c. The same Law is of a feofment of parcell of the tenancy made upon condition, &c. Mutatis mutandis, &c.

683. So shall it bee of parcell of the

tenancy in severalty be recovered by erroneous processes, or by false verdict, or upon a false title, &c. and afterwards is recontinued, &c. The Statute saith that the feoffee shall hold now of the Lord, and if it bee of part, then of that part, Et decidat Capitali Domino ipsa pars servicii, &c.

M. 21. E. 3. 36. 684. If there be Lord and Tenant of three acres of Land by homage, fealty, suit of Court, Escuage, and the Rent of a horse payable at the feast of Easter, or by the rent of a Hawke, or of a Rose, &c. And the Tenant after the Statute doth enfeoffe one man of one acre parcell of the tenancy, and doth enfeoffe another man of another acre parcell of the tenancy, in this case every of them shall hold of the Lord, by homage, fealty, and suit, but the escuage shall be apportioned, and the release when it falleth as a Rent severable shall be apportioned, and the Lord shall have but one horse, or one rose, or one Hawke of them all not apportionable: And he shall make one avowry upon them all for such entire Rent, although that the Lands be severable, as hee may make at the Common Law for such entire rent, &c. And notwithstanding that by the said Statute the feoffee of parcell of the tenancy in severalty, shall hold of the Lord, Per particula illa, yet before the Lord is bounden to avowe upon him, he ought to give notice unto the Lord; and yet in right he holdeth of the Lord immediatly, and

22 E. 3. 24

And the Lord shal have ward, or relefe, or a Cessavit, or assise of the rent before notice aken unto him. But the feoffee shall not have acquitall before notice, &c. the notice ought to be given in this manner, viz. To shew the feofment unto the Lord, and if the tenure be by homage, to tender unto him homage and fealty, and all the arrerages of the rent, or otherwise the Lord is not bounden to take the notice, for the feoffor shall not be discharged before the arrerages paid, and the feoffee of parcell ought to tender all the arrerages, &c. And if there be two joynt feofees it behoveth them to give their notice joyntly. An enfant who is a feoffee shall give notice; and an enfant who is Lord shall take notice, &c. 7. E. 4. 27. P. 4. E. 3. 22. T. 47. E. 3. 4.

685. And the Husband who is seised of a seigniory in the right of his wife, if the tenure be by homage, he and his wife shall take the notice: But if the tenure be but by fealty, and Rent, the husband alone may take the notice: But if a sole woman bee enfeoffed of parcell of the tenancy, and before notice shee taketh a husband, in such case the husband, and the wife ought to give the notice joyntly. And an Abbot who is feoffee of a tenancy shall give notice, &c. But hee who hath the whole tenancy, or parcell of the same in severalty by matter of record, as by recovery, or by fine, shall not give notice, &c. For the Lord is bound to take notice thereof, &c.

686. But

686. But if a fine be levied Sur ſo mſans de droit of a tenancy, and the conuſee be in poſſeſſion of the tenancy, it is at the liberty of the Lord, whom hee will take for his tenant before the conuſee enter. &c. But it is to know if at this day a tenure ſhall be made by void reſervation, it behoweth, that the reverſion of the ſame thing, out of which the reſervation is made, and of the eſtate which is made, remaine in him which maketh the reſervation; if not, that it be in ſpeciall caſes, &c.

687. And therefore if there be two joint tenants of Land, to have and to hold the ſame Land unto them, and unto the heires of one of them, and they ſome in a guift in taile unto a ſtranger reſerving rent unto him who had but an eſtate for life, this reſervation is void to make a tenure. For notwithſtanding that if the donee in taile dieth, without iſſue, during his life, and the life of his ſome donor, that then hee ſhall have the Land againe; yet that doth not proove that any reverſion of the ſame Land after the guift made, remaineth in him who had but an eſtate for life at the time of the gift: For if at this day a man ſeiſed of Land doe enfeoffe thereof a ſtranger by deed indented, reſerving unto him, and unto his heires, r.s. Rent payable, &c. upon condition, That if the feoffor pay unto the feoffee 10.l. &c. That then it ſhall be lawfull unto the feoffor, and his heires

8.E.3.7.

heires to reenter. In this case, the feoffor may have againe the Land, and yet the reservation is void to make a tenure, &c.

688. But because it is by deed indented, the feoffor shall have the rent reserved as a rent seek, and to this purpose it shall take effect in the feoffee as a grant of the feoffee, in so much as if it be reserved with clause of distres, the feoffor shall have it as a rent chardge. So it appeareth that when two ioynt tenants of Land, and unto the heires of one of them ioyne in an estate in taile, that nothing of the reversion of the same Land doth remaine in him who had but an estate for life, &c. And yet if lessee for life be of Land, and he maketh a guift thereof in taile unto a stranger reserving rent, &c. that this reservation maketh a tenure betwixt him, and the donee, &c. as long as the gift continues in force, because that by the guift he hath gained unto himselfe a reversion in Fee, in the same Land whereof the guift was made, &c. 31 E. 3. parts. 6. 14 Ass. 14

689. But put case, If two or three ioynt tenants are of Land, to have and to hold unto the heires of one of them, and they ioyne in a gift in taile without saying more, the donee shall hold of them by the like services, as they hold over: But if they have reserved new services unto them all upon the guift, Quere how the same shall enure, &c.

690. If there be disseisor, and disseisee of

of any acre of Land, and they both enter into the same acre, and deliver an estate thereof unto a stranger in tayle, to hold of the disseisee, and his heires by homage fealty and escuage, this is a good tenure, because the disseissee is the donor, and the reversion doth remaine in him, because he was remitted before the livery of seisin made unto the donee in taile, &c. But if they had given it in taile to hold of the disseisor, it is a void tenure, and then the donee shall hold of the disseissee by the like services as he held over. Causa patet.

691. If a man seised of one acre of Land in fee, leaseth the same unto a stranger for yeares, and the lessor and lessee joyne in a guift in taile unto a stranger, reserving 20 unto the lessor, the same is a good tenure: But if lessee for life of one acre of Land joyne in a guift in taile of the same acre, with his lessor unto a stranger by deed, containing words of confirmation to hold of the lessor by 10.s rent. Quære thereof: If Cestui que use of Lands entreth upon the feoffees, and leaseth the same Land unto a stranger for life, according unto the Statute of 1. R.3 reserving 10.s. Rent, the same is a void reservation to make a tenure, for the reversion of the same Land is not in the lessor, but it is in the feoffees, and they are strangers unto the lease, and the reservation, &c. But if such lease, and reservation be by deed indented, then the

M.5.H.7.5 H.8.H.7.5 T.15.H.7.25. T.27.H.8.23.

the lessor shall have the rent, as a rent seek.

692. If Cestui que use, hath leased the Land in use for terme of yeares, reserving rent, &c. by word, In such case the lessor shall not distreine for the rent reserved because no reversion doth remaine in him, &c. But it is said. That he may have an action of debt for the rent against the lessee, because it is but as a contract. As if a man sell Lands or Tenements for money by word, hee may have an action of debt for the money, &c. And it hath beene holden, that in such case the lessor shall not have an action of debt for the Rent reserved, unlesse it by deede indented, and the reason as it seemeth is, because it cannot be taken as a contract, because it is by reservation: And then if the lessor take advantage thereof it behoveth him to have it as a rent seek: and then it ought to take effect in the lessor, as a grant of the lessee; and rent cannot take effect in any person by way of grant by word, if not that it be in case of partition, &c. and other speciall cases, &c. Tamen quære, for such leases are commonly made with reservations by cestui que use, by word, &c.

693. If there be lessee for 20 yeares of Lands or tenements, and he granteth the same Lands or tenements unto a stranger for parcell of the yeares, reserving unto him 20.s. &c. In this case the grantor shall destraine for the rent reserved,

served, or have an action of debt at his pleasure, and the reason is because by common intendment hee is to have the same Land after the yeares determined, because hee hath granted unto him, but parcell of the yeares, so as the remainder of the yeares are in him.

6.10.L.4. 694. If there be disseisor, and disseisee of one acre of Land, and the disseisee doth release all his right in the same acre unto the disseisor, to have and to hold the same acre unto him, and his heires of his body, reserving unto him, and his heires v.s. Rent yearely, &c. it is a void reservation to make a tenure at this day, for notwithstanding that such release doth goe by way of making of an estate, yet the fee of the Land, which is in the disseisor, shall not be devested out of him, by such release, if the release be not by deed intended, and if it be, then Quere thereof. For then it seemeth that the releasor shall have the reversion of the fee by conclusion. But if there be two joynt disseisors, and the disseisee doth release unto one of them, hee shall hold out his companion, &c.

7.L.4.25.

695. If there be Lord, and tenant of Land by fealty, and rii. d. and the tenant leaseth the tenancy unto a stranger for life without any more saying, In this case the lessee shall hold of his lessor by fealty onely, and not by the services by which his lessor holdeth over: But if the lessor hath reserved any service, or

Rent

Rent upon the lease, hee shall have the same: But if at this day nothing be reserved upon a gift in tayle, The donee shall hold of the donor by such services as hee holdeth over, As if a man seised of Land in fee, leaseth the same Land for life reserving 10. s. and the lessee giveth the same Land unto a stranger in tayle, and doth not reserve any thing upon the guift in tayle, quære, How the donee shall hold the same, &c.

696. Now is to shew. What things may be reserved for to make a tenure. And as to that. Knowe. That all such things as lie in feasance, or in tenure, may bee reserved for to make a tenure, for such things may be said Rents, or Services. As if before the Statute of Quia Emptores terrarum, A man seised of Land doe enfeoffe the reof a stranger, to hold of him and his heires to secure the ditch of the feoffor, &c. Or to cover his Hall or to repaire his Kitchin, or to give unto the feoffor, and his heires when hee shall come unto his manor of Dale a dinner: Or to finde a Chapline every Friday in the weeke yearly in his manor of Dale &c. Or to give unto the feoffor 10. s. Rent, or a horse, or graffe, or arrowes, or a speare, or a launce, or a Cup of silver or a paire of spurres, or a ring of gold or silver, &c. Or a quarter of wheat, or of barley, &c. Of all the things aforesaid a tenure may be made by way of reservation. Or of all other things which bee in feasance

sance or in render a tenure may be made by reservation upon a feoffment, &c. And at this day a tenure may be by reservation of such things, upon a guift in taile, or upon a lease for life, &c.

697. And it is to know that when the Law maketh the tenure or reservation, Then the heires of the feoffor, donor, or lessor shall have the services aswell as the feoffor, donor, or lessor himselfe shall have them: But if the reservation of the service or rent, &c. be made by expresse words of the party, &c. Then the heires of the feoffor, donor or lessor shall not have the services, and Rent reserved, if not that it be reserved unto them by expresse words, &c.

M. 10. E. 4. 18.

698. And therefore, if before the Statute of Quia Emptores terrarum, There be Lord and tenant of Land and tenements by Knights service, and the tenant doth enfeoffe a stranger of the tenancy without reserving any thing, the feoffee and his heires shall hold of the feoffor, and his heires by Knights service, if the feoffor, and his heires hold over by the like services: But if the feoffor himselfe holdeth over by Knights service, during his life, and no longer, and that after his death his heires shall hold by fealty only, or by other services, Now the feoffee and his heires shall hold of the feoffor and his heires by the like services, Mutatis mutandis, and so shall it be if the tenant at this day doth give the tenancy in taile

taile without reserving any thing. Mutatis mutandis, &c.

699. But if the feoffor, &c. or donor, &c. or lessor for life reserve unto him upon the feoffment before the said Statute: Or reserve unto him upon the guift or lease, after the said Statute, Knights service, or fealty and 10. s. or a Horse, &c. and dieth: his heire shall have only fealty because the reservation doth not extend unto the heire of the feoffor, donor or lessor. But if in the same Case the feoffor, donor, or lessor grant his seignory or reversion, &c. And the tenant doth attorne unto the grantee: The grantee shall have all the services, and the Rent reserved, &c. during the life of the grantor &c. 16. Ass. p. 38.

700. And if a man seised of two acres graseth the same unto a stranger for life, yelding for one acre, and sheweth which are in certaine, 10. s. unto the lessor, and his heires, and yeelding for the other acre 10. s. &c. unto the lessor, and the lessee dieth, and the reversion of both acres doe descend unto his heire, the heire shall not have the 10. s. last reserved unto the lessor, &c. P. 11. H. 7. Ass. 16.

701. And if a man seised of Land after the Statute of Quia emptores terrarū, giveth the same Land unto a stranger, to homagio & servicio suo: To have and to hold the same acre unto him, and his heires of his body begotten, in this case the issue of the donee shall doe fealty onely unto the donor, and his heires; And the

heires of the donor shall have onely fealty of the donee, and his issues, &c.

702. And it is to know that a reservation of things which lie onely in prender or usage, cannot make a tenure. And therefore if a man seised of Land, and wood, before the Statute of Quia emptores terrarum, doth thereof enfeoffe a stranger, and after the said Statute doth give the same Land, and wood in taile, or leaseth the same for life unto a stranger, reserving unto the feoffor, donor, or lessor common for 4. beasts in the same Land, & for to suffer the feoffor, donor, or lessor to take yearely in the same wood three Loads of estovers for fewell; this reservation is void to make any tenure, and the reason why such things cannot be said a reservation is, because that the feoffor donor or lessor cannot take profit thereof but only by his owne act, and a man cannot doe service unto himselfe: And therefore such reservation is void, if it be not by deed indented, and then he shall take the same by way of grant of the feoffee, donee, or lessee.

703. And therefore if a man seised of Land, doe enfeoffe a stranger thereof by deed indented, or giveth the same Land in taile, or leaseth the same for life unto a stranger by deed indented, reserving common without number unto him, and his heires, this is a good grant in fee simple if it be reserved upon a freehment: But if it be reserved upon a guift in taile, the

it shall enure and take effect by way of grant of the donee, and shall be good and effectuall during the life of the donee, and no longer, &c. The same Law is, if it be reserved upon a lease for life by deede indented, &c.

704. And it is to know, that the donor, grantor or lessor, cannot reserve unto them a lesser estate in the same thing in which they depart withall by the gift, &c. then they had in the same at the time of the guift, &c. by matter in deed or writing. Quære, if it be by writing indented, &c.

705. But if such reservation be by fine, it shall be good by way of conclusion, &c. And therefore if a man seised of Land in fee, giveth the same Land in fee, or giveth the same Land in taile unto a stranger, or leaseth the same Land unto a stranger for life, the remainder thereof unto the donor or lessor for life, or in taile, the remaindor over unto a stranger in fee: In this case the remainder unto the donor, or lessor is void, and yet the remainder over unto the stranger is good, &c. The same Law shall be, if the donor or lessor had not had but an estate for yeares, or for life in the Land given, or leased, &c. At the time of the guift or lease with the remainder over, in manner and form as before is said, for when lessee for yeares or for life maketh such a gift or lease, &c. They which take by such guift or lease cannot disable their donor or lessor to make such a gift, or lease unto

H. 12 E. 3. 5

them, and so it doth not lie in them to plead that their donor, or lessor had not a fee at the time of the gift or lease made, &c. But notwithstanding such gift or lease made by lessee for yeares, or for life, hee or they who hath or have right may avoid the same by entrie, or by action, as their case is, &c.

706. If husband and wife, and a third person be joint tenants of Land or tenements in fee, and lease the same Lands, and Tenements by deed poll unto a stranger for life saving the reversion unto them three, and unto the heires of the husband, notwithstanding that, The reservation shall bee unto them all three jointly in fee. The same Law is of things which lie in grant, Mutatis Mutandis, if not that it be in speciall cases: But if such reservations were made by fine, they were good enough if not that it be in speciall cases, &c.

CHAPTER 11th.

Conditions.

707 NOw is to speak of conditions, And first it is to know that conditions may be annexed unto things inheritables: unto freeholds, and unto chattells realls and personalls: unto things inheritables and freeholds. As put case. A feoffment or a gift in tayle, or a lease for life, or the life of another, be made of Lands or Tenements upon Condition, or if a grant of a Rent or Common, &c. be made in fee tayle, or for life, or for anothers life upon condition, &c. Unto chattells reall: As a man seised of Land leaseth the same Land by indenture, unto a stranger for the Terme of five yeares upon condition, that if the lessee pay unto the lessor within the two first yeeres ten markes, that then hee shall have fee in the Land let, or otherwise but an estate for five yeares, and livery of seisin is made according unto the deed, in this case it hath been holden that the lesse hath a fee simple conditionall presently, which it cannot be, because that the words of the condition are Verba de futuro viz. That if he pay, &c. that then he shall have fee. 11. 4. 11. 3. 2.

708. And therefore if a man seised of

Land in fee, doth leaſe the ſame unto a ſtranger for yeares upon condition, that if the leſſee be ouſted of the Land within the Terme by his leſſor, that then he ſhall have fee, &c. Now if the leſſee within the Terme be put out by a ſtranger, without the aſſent of the leſſor, the leſſor ſhall have an aſſiſe of this ouſter, and not the leſſee, for in ſuch caſe the freehold did not accrue unto the leſſee, but when the condition is performed, and at all times before the condition performed the freehold doth remaine in the leſſor. And yet if a man ſeiſed of Land, doth leaſe the ſame Land unto a ſtranger for life, and doth grant the remainder over of the ſame Lands unto the right heires of I. S. which I. S. is then alive, in that caſe, the fee is in abeyance, viz. in the Conſideration of the Law, and is in no perſon certaine, and the reaſon is in that caſe becauſe the remainder is granted by words in the preſent tence, and alſo in this caſe the freehold is not to be put in abeyance: and in the principall caſe if the freehold and the fee, &c. ſhould not be in the leſſor, &c. untill the condition be performed, then would it follow that the heire of a diſſeiſor by his act ſhall put the diſſeiſee unto his action, And all other perſons who have right unto Lands or Tenements, by ſuch meanes, the tenant of the freehold by his owne act might put them unto their actions: for the writ of Entre en le per, and ſuch other actions ought

9.H.6. 29.
2.H.7.3.
T.12.H.7. 27.

ought to be brought and pursued against the tenant of the freehold, &c.

709. But if a parson of a Church be seised of Glebe Land in the right of his Parsonage, or Vicarage, unto which Land a stranger hath right of action, and the Parson or Vicar dieth, In this time during the time of the vacancy of the Church, he that hath right of action, shall use or follow his action, because that during the vacancy the freehold is in no person, &c. The same Law is, as it seemeth, if such a parson, or Vicar, doth resigne his Benefice into the hands of the Ordinary, in this case during the time of the vacancy, hee who hath right of action unto the Glebe Land cannot commence his action, &c. and yet the Church doth become void by the act of the incumbent, &c. But that is a speciall case; and the same Law shall bee of the like speciall cases, &c. 11 H. 7. 8. 10

710. If a man seised of Land in fee doth lease the same Land by indenture unto a stranger, yeelding 5. l. by the yeere, and the indenture is, that if the lessee will hold over ten yeeres to him, and his heires, that he shall pay 20. l. by the yeare, and livery of seisin is made unto the lessee accordingly, In this case for the rent behind within the ten yeeres, The lessor shall have an action of debt, which proveth that the freehold, and the fee, are not in the lessee before the ten years ended, But if when the ten yeares be past,

pass, and ended, the lessee doth continue the possession of the same Land, and doth occupy the Land by force of the indenture then he hath see, and shall pay 20. l. by the yeare as a rent seek.

N. 42. E. 3. 27. 711. But if a man seised of Lands doth lease the same Lands for life, reseruing unto him a Rose for the first fiue yeares, and if hee will hold the Land ouer the fiue yeares, that hee shall pay three markes by the yeare, in this case the lesse hath the freehold presently, &c. And Gardien in Knights service may grant the wardship of the body and Land, or any of them, upon condition. Tenant by Statute merchant, and tenant by elegit may grant their Estates, or parcell thereof upon condition, &c.

712. And Conditions may be annexed unto chattells personalls. And therefore if a man selleth 20 Oxen, or other chattells moueables or not moueables upon condition, that if the seller goe unto Rome within one yeare then next following, that the vendee shall pay unto him for the Oxen, or other chattells 20. l. Or otherwise that hee shall pay unto him but 40. s. for the Oxen, &c. this is good, &c. and the vendor shall not have the 20. l. &c. if he doe not performe the condition, &c. And a man may baile goods upon condition, &c.

713. As if a man contract with a Physitian, or with a Surgion, that if he shall cure such a one, and name him certeine.

of

of such a disease, and name the disease, that he shall have 10.l. the same is a good contract conditionall. If a man sell a house without the Land upon the which the house is built for 20.l to be paid when the vendor hath removed the house unto such a place at his owne costs, and name the place, &c. The vender shall not have the money before that hee hath removed the house, according unto the condition, &c. M. 14. E. 3. 18.

714. And the retainer of a servant may be upon condition, &c. And know that M. Fitleton in his third booke, Chapter of Estates, hath shewed, what Conditions ought to be by deed, and what may be without deed, &c. And in the same Chapter he hath shewed diverse, & many other good, and necessary cases concerning Conditions, &c.

615. And it is to know, that charters, concerning inheritances may be delivered upon condition without deed, and yet they are not Chattells: The retainer of a servant according unto the statute of Laborers upon condition is good without deed, &c. But a rent cannot be granted for yeares upon condition, without an indenture, if the grantor will take advantage of the condition, &c. The same law is of an advowson in grosse, common in grosse, and of the things which cannot passe without deed, &c.

616. It hath beene holden, that if a man doth enfeoffe a stranger of Land, and M. 6. H. 7. 8 M. 4. E. 4. 34.

M 7 H. 6 7. T. 44 E. 3 32.

and tenements, to reinfeoffe him, and his heires, & the feoffer dieth, & his heire doth require the feoffee for to reinfeoffe him, and hee refuseth, for which the heire entreth, and the feoffee doth bring an action of trespas, that the heire shall plead this feofment with the condition without shewing the deed thereof, because it is in an action of trespas in which action freehold is to be recovered; But the law is contrary at this day, for if in an action of trespas for breaking of his close, &c. the defendant plead, that the place where, &c. was his freehold at the time, Now if the plaintiffe will conclude him so to plead, by reason of the feofment of the ancestor of the defendant (whose heire he is) with warranty, &c. and relie upon the warranty, it behoveth him for to shew the deed thereof notwithstanding that it be in an action of trespas, &c. But in many cases, diverse persons unto whom a deed doth not appertaine shall take advantage of a condition, annexed unto the freehold, and also of things which lie in grant without shewing the deed: And therefore a woman may demand her dower of

5 H. 6. 21. 44 E. 3. 27.

a Rent charge, or of a common in grosse which is certaine, and without shewing the deed thereof, &c.

717. Now is to shew at what time Conditions ought to be annexed unto inheritances freeholds or other things to be held and defeate the same. And as to that know, That when a thing executed shall be

be defeated, and made void by a condition, it behoveth that the condition be annexed unto the same thing, at the time of the Executing thereof, otherwise as unto that purpose, it is not any thing worth. But it is otherwise of things executory, if not that it bee in speciall cases, &c.

718. And therefore if there be a disseisor of one acre of Land, and the disseisee doth release unto the disseisor all his right by deed (as hee ought) and afterwards it is covenanted betweene them by Indenture, that if the disseisee pay unto the disseisor 4.l. before the feast of Easter then next following, that then the release shall be void, and of no effect, &c. And the disseisee doth pay the money according to the Indenture yet the release is good, and effectuall, and shall not be avoided by such covenant or condition, &c. because the release taketh effect before the condition or covenant doth begin. But it seemeth that by the payment of the money, &c. the disseisor is seised unto the use of the disseisee, &c. Tamen quære. But if such Indentures, and releases had beene first delivered as the deeds of the parties simul & semel, then such condition or covenant is good to avoid the release, &c. And so shall it be, if such condition had beene contained within the release, if the release be by deed indented. The same Law is of a release which goeth, and doth enure by way of enlarging of an

3.Ass. 1. 17.Ass.p.2. 43.Ass.p. 12.

H.17.E.3

an eſtate. and of a releaſe which doth enure by way of extinguiſhment of a rent or common, &c. or to determine a title of entry, And of feoffments, gifts, grants, leaſes, confirmations, &c. And of ſales, contracts, bargaines, and retainers, &c. Mutatis mutandis: But otherwiſe it is of things executories, if not that it be in ſpeciall caſes, &c.

2. 3. 7 24.

719. And therefore if a man doth enfeoffe a ſtranger of certaine Land and Tenements with warranty, and afterwards the feoffee doth grant unto the feoffor by deed, that if hee be impleaded of the ſame Land, &c. That then hee will not vouch him by force of the ſame warranty, this is a good grant, becauſe the voucher is executory.

720. If J be diſſeiſed of one acre of Land, and my collaterall auncеſtor doth releaſe unto the diſſeiſor with warranty, & dieth without iſſue, and the warranty doth deſcend upon mee, and afterwards the diſſeiſor doth grant unto mee by deed, that if he be impleaded that hee will not helpe himſelfe, nor take advantage by way of plea of this releaſe, nor of the warranty contained therein, the ſame is a good grant, becauſe it is made of a thing executory, &c.

7. 11. 4. 43.

721. And if a man ſeiſed of Lands and Tenements doth leaſe the ſame Lands, &c. Unto a ſtranger for life, in this caſe the leſſee is puniſhable for waſt: But if the leſſor after the leaſe by a deed doe grant

grant unto the lessee that hee shall not be punished for waste, it is a good grant, because it is made of a thing executory: it appeareth how. The same Law in all like cases, &c. 9 H. 6. 5. 21 H. 7. 31. 41 E. 3. 24.

722. Now there are two manner of Conditions, that is to say, Conditions in deed, and Conditions in Law. Of which Master Littleton hath spoken in his third booke, in the Chapter of Estates, &c. But it is to know, That there are three manner of Conditions in fait, which are not good, viz. Conditions against the Law, Conditions repugnants, and Conditions impossible. And know that of estates made upon Conditions against the Law, the estates are good, and the Conditions are void; if the estates doe not commence by the Conditions, for then both are void, viz. the estates, and also the Conditions, if not that it be in speciall cases, &c. 1 E. 4. 16. H. 4. 11. 7. 4

723. And therefore if a man seised of Land doe thereof enfeoffe a stranger, &c. or thereof doth make a guift in taile, or maketh a lease thereof unto a stranger, upon condition, that if the feoffor, donor, or lessor kill I. S. who is an enemy unto our Lord the King, that then it shall be lawfull for him to reenter; the condition is void, and the estate is good. The same Law is of a rent, common, and other things which lie in grant, &c.

724. If a feoffment, guift, grant, lease, or, &c. be made upon condition that if the

the feoffor, donor, or grantor, or lessor burn the houses of I. K. that it shall be lawfull for him to reenter, &c.

725. The same Law is if such condition be to be performed on the part of the feoffee, donee, grantee, or lessee; &c. But if a lease for life, or yeares be made of Land upon condition, That if the lessee kill I.S. within the Terme, then hee shall have and hold the Land leased unto him; and his heires for ever; Now notwithstanding that the lessee doe kill I.S. within the terme yet his estate is not enlarged thereby, because that the condition is against the Law, and the estate doth begin to be enlarged upon the performance of the condition; But notwithstanding such condition yet the lease is good, because the same doth not begin by the condition, &c. But if an obligation be endorced expresslie with such a condition against the Law, the Obligation and also the Condition are void.

H. 1 H. 7. 4
S. F. 4. 13.
P. 2. E. 4. 3.

726. As if a man be bounden that hee will keepe the Obligee without damage, and doth not shew in what thing, such condition is void, because hee may have damage by doing of treason, murder, or felony, &c. which are things against the Law, and also it is against the Law to keepe a man from damage for such things, and so the condition is void. But the Obligation is void, because that such things are not expressly reversed within the condition, and so it

S. Hen. 4. Condition. 6.

cannot

cannot be expressely said, that the will of the obligee was that the obligor should save him harmlesse for such acts done against the Law.

727. And it is to know. That if a gift in taile be made of Land, &c. upon condition, that the donee shall discontinue the same Land, &c. It is a void condition because it is against the Statute of West. 2. Cap. 1. De donis conditionalibus, &c.

728. If a feofment be made unto I.S. of Land upon condition that hee shall enfeoffe thereof the Abbot of Westminster, the condition is good because that the feoffee may performe by the leave of the King, and of the Lord of whom the Land is holden. Notwithstanding that the condition is Prima facie against the Statute of Mortmaine, &c. At it is said that if a gift in taile be made upon condition, that the donee may alien for the profit of his issue, that this is a good condition, notwithstanding the Satute of West. 2. Cap. 1. De donis, &c because that the Statute was made unto the benefit of the issue of the donee, and this condition is for the benefit of the issue in taile, &c.

H. 46. E. 3. 4.
H. 8. H. 6. 24

729. If a lease for yeares be made upon condition, that if the lessor doe alien the reversion within the terme that the lessee shall have fee, and the lessor doth grant the reversion in fee unto a stranger by fine, the lessee shall not have fee by this condition, for the freehold, and the fee is

6. R. 2. con. 1.

is in the cenu'ee lawfull before, the lessee can take it by the condition, Tamen Quære, if the lessor had granted the reversion unto a stranger by fine for life, whether the lessee by force of the condition shall have fee, which is dependant upon the same estate for life. And it seemeth to some that he shall have it, because that when the lessor hath granted the reversion unto a stranger for life, hee hath aliened it. And it seemeth to some that the lessee shall not have fee, which is dependant upon the estate for life by such grant, for they say that the condition shall be intended of an alienation made of the whole reversion which was in the lessor, &c. Ideo quære.

730. But if the condition were, that if the lessor grant the reversion unto a stranger in fee, that then the lessor for yeares shall have fee, And the lessor grant the reversion unto a stranger in fee by deed, In this case the lessee shall have fee by the condition. And the reason is, because that the reversion is not in the granter before attornement, and yet the seeffor hath granted the same, and against this grant, hee cannot plead, That hee did not grant it by the deed. But if the lessee doe attorne unto the grant then quære. If the lessee shall have fee by the condition, because he is the same person who should take advantage of the condition. But it seemeth unto some persons, that this attornement shall not take

away

away his advantage by force of the condition, because that the fee is in him by the condition before his attornement, for the attornement cannot be so soone done but that there shall bee an instance betweene the grant, and the attornement, and immediatly after that the lessor hath delivered the deed of grant of the reversion unto the grantee as his deede, The fee is in the lessee by force of the condition, which shall not be devested out of him by attornement, if not that it be by matter of conclusion, and the attornement is not any matter of conclusion unto him, &c. But alienare, idem est quod alienum facere. So that notwithstanding that the lessor hath granted the reversion by deed, yet it is not an alienation before attornement. Causa patet, &c. And if the condition be, that if the lessee be ousted within the Terme by his lessor, that then he shall have fee, if the lessor ouse him within the Terme he shall have fee. But Quære, if the condition be, that if the lessee be put out by a stranger, &c.

M.21.H.7. 21.

731. And it is to know. That Conditions are repugnants. As if a feofment, or a gift in taile be made upon condition, that the feofee, or donee shall not take the profit; Or upon condition that he shall not doe wast, or upon condition that the Wife of the feoffee shall not be endowed, these are void conditions, and the estate is good. And if a lease for life

M.21.H.7. 30.
V.10.E.9. 8.

be made upon condition that the lessee shall not doe fealty, it is a void condition. And if a man who hath nothing in black acre, grant unto me a rent charge issuing out of black acre, upon condition that by the grant, I shall not charge his person, it is a void condition, and so repugnant, &c.

T. 7. 11. 6. 43.

732. But in the same case, if the grantor at the time of the grant, had been seised of the same black acre in demesn, or in reversion, the condition had been good. If a lease for life of Land be made upon condition, that if the lessee be impleaded of the same Land, that he shall not vouch his lessor, It seemeth the same is a good condition, yet it is said it is not, because that the reversion in such case is the cause of the voucher, &c. And if a man seised of Land in fee leaseth the same Lands by indenture for yeares, rendring rent, provided alwayes that the lessor shall not distraine for the rent, it is a good condition, because that he may have an action of debt for the rent, &c.

733. If I. S. seised of Land doth lease the same Land unto T. K. for terme of life rendring rent, &c. And T. K. being seised of other Land leaseth the same Land unto I. S. for terme of life, upon condition that if I. S. distraine for the rent 7 H. 6. 35. 21. H. 7. 31. 21. H. 7. 31 reserved upon his lease, &c. that then it shall be lawfull for T. K. to reenter into the same Land which he leased unto I. S. this is a good condition.

734. And

734. And if a man doth enfeoffe a stranger, with warranty, provided that the feoffee nor his heires shall have nothing in value by force of the warranty, it is a good condition, because that notwithstanding that, the feoffee may take advantage of this warranty by way of rebutter, &c. And if a gift in taile, or a lease for life, or a lease for yeares be made upon condition, That the donee, or lessee shall not grant their estates, nor any part of their estates unto any other person or persons, the same is a good condition, by reason of the reversion which remaineth in the donor or lessor, &c.

735 Now is to speake of Conditions impossible, and as to that, Know, that an impossible condition is void, But if such a condition be in making of an estate the estate shall remaine good, but estates shall not be inlarged by Conditions impossible. And if an Obligation be endorsed with a condition impossible, the Obligation is good, and the condition is void. And therefore if a man enfeoffe of Lands in fee doth thereof enfeoffe a stranger upon condition, that if the feoffee doe not goe out of England unto the Church of S. Peter in Rome, and retorne againe into England within three dayes next following the feoffment, that it shall be lawfull for the feoffor to enter, the condition is void, because it is impossible, and yet the estate is good, &c.

736. But if a lease for life be made upon such conditions, &c. that then the lessee shall have fee in the Land, his estate cannot be enlarged by such a condition, because the estate not to begin to be enlarged but by the conditiō performed, and the same is impossible to be performed, &c. And if I.S. be bound unto T.K. in an Obligation of 20. l. upon condition that if the Obligor goe Ad terram sanctam out of England in one day, next insuing the date of the Obligation, and retorne the same dey into England, &c. This Obligation is good, and the condition is void. Causa patet.

737. If a man be bound in an Obligation upon condition, to be performed in France, the condition is void. But if it can be tried it is good enough, notwithstanding that it be to be performed in France, As in the time of war, diverse things are done beyond the Seas which shal be tryed by the certificate of the marshall of the Rings hoast, &c.

738. If a lease for yeares be made of a wood by deede indented, and it is covenanted in the deede: That the lessee shall
P. 14. H. 8. 32. have the wood in as good plight as it was at the time of the lease made, and during the Terme the wood is destroyed by a sudden tempest: At the end of the Terme the lessor shall not have an action of covenant for the not performing of this covenant, for it is not possible for the lessee to performe the same: But if such

such a covenant be made upon the lease of a house, and the house be thrown down during the terme, the lessor after the end of the Terme shall have an action of covenant for the not performing of the covenant, Causa patet: But in such case the lessee shall not be charged in an action of waste, &c.

739. And as to the words which of themselves make estates upon conditions, &c. And of the making of feoffments in mortgage upon condition of the part of the feoffor, and where the feoffor or feoffee ought to demand the money, &c. And where it behoveth him who ought to performe the condition to seeke him to whom the condition ought to be performed, And by what persons, and to what persons the condition ought to be performed, with diverse other good and necessary matters appertaining unto conditions, Master. Littleton who was an honorable sage of the Law hath made a good and necessary declaration thereof in his Chapter of estates upon condition, &c.

740. And it is to know. That if the words of a condition be. Et pro solutione fit, &c. that it shall be lawfull for the feoffor, and his heires to take back the tenements, and to make his profit of them, by these words the feoffor, and his heires may reenter for not payment, &c. The same Law is if the words of the condition be, Et pro non solutione, that the

and his heires may Recipere the Lands, for they cannot be otherwise intended, notwithstanding that the word Recipere imply a livery to be made of the Tenements, &c. Quære if the words of the condition be, that the lessor and his heires, Pro non solutione, &c. may retaine the Lands, &c. how the words of the condition shall be taken, whether according to the intendment which the Law maketh of the condition, or according to their signification.

741. And therefore if I be enseoffed of Land, upon condition that I shall give all my goods (Si quæ fuerint) in this case this word (fuerint) shal be taken in the present tence, and not in the future tence, because by the Law it cannot be otherwise intended: For a man cannot give goods in which he hath no property. And if a man be enseoffed upon condition that he shall give all the pikes in his pond (Si quæ fuerint) in this case (fuerint) shall be taken in the present tence.

742. If a feofment in fee be made upon condition, that all the doctors in Pauls (Si qui fuerint) shall be at such a place such a daie (Fuerint) shall be taken in the Present tence, &c. And the common making of Charters is in the perfect tence, viz. By Dedi & concessi: and yet they shall be taken in the Present tence. If a man be enseoffed upon condition that hee shall be Non suit in all his actions in the common Pleas (Si quæ fuerint) (Fuerint) shall

shal be taken in the Present tence: But if a man be enfeoffed upon condition that he shall give all his goods in London unto I S. (Si quæ fuerint) in this case (fuerint) shall be taken for th time past; for he may have goods which were in London, but now are not there.

743. If a man be bound in 20. l. &c. upon condition that I. F. Et omnes alii si qui fuerint feoffati ad usum dict. I. de manerio de B. relaxaver. totum jus suum quod habent, &c. Custam T. F. filio suo, & hæred. dict. I. F. Et scriptum illud sigillo suo signat. ad P T. ad usum dict. T. F. citra tal. festum deliberaver. quod tunc. &c. Now the word (fuerint) shall be taken for the time past, and it shall bee intended that those who were his feoffe shall release, for it may be that hee had feoffees who were disseised, and yet they had right according to the words following, viz. totum jus quod habent, and the intent of the condition was, that the release should be good and profitable, &c.

744. If a man make a feofment reserving rent, &c. and Pro non solutione, &c. that the feoffor, and his heires may reenter, Now by these words they shall reenter: for the word (may) doth imply liberty in the parties to whom it doth extend: If the words be, that the feoffee and his heires (poient) solvere, &c. And pro non solutione, &c. That it shall be lawfull for the feoffor, and his heires to to reenter; yet the feoffor and his heires

shall

shall not reenter Pro non solutione. Causa patet.

12. Ass. p. 5. 745. If a lease be made for life upon condition, that if the lessor or his heires pay unto B. or his heires 10 l. at such a day, that it shall be lawfull for the lessor, and his heires to reenter, and if they doe not pay it within the time, and the lessee pay unto the lessor, or his heires 10. l. at such a day which is after the day of payment, which ought to be by the lessor or his heires, that then the lessee shall have, and hold the Land to him, and his heires for ever: And the lessor nor his heires doe not pay the money, &c. nor doth the lessee pay, &c. yet the lessee shall hold the Land during his Terme.

746. If a feoffment be made upon condition that if the feoffor paie 10. l. unto the feoffee, and goeth to Rome before such a day, that it shall be lawfull for the feoffor, and his heires to reenter: If he pay the 10. l. before the day, and doth not goe to Rome before the day he shall not enter, because the condition is by the word (Et) which is a copulative: But otherwise it shall be if the condition be by this word (vel) because that is in the disjunctive, &c.

M. 14. H. 8. 27.

747. Now is to shew, how, and in what manner a condition in fait shall be performed, &c. And as to that there is a difference when the condition is to be performed to the party, and when it is to be performed unto a stranger, &c.

H. 4 H. 7 4

When

When it is to be performed betweene the parties, it is not requisite that the condition be performed in all things as is expressed, if the parties assent thereunto, &c. But if the condition be to be performed unto a stranger, it ought to be performed according unto the words of the condition in all effects all poynts, if not that it be in speciall cases.

748. And therefore if I be bounden unto I.S. in 20.l. to pay him 10.l. at a certaine day, and in a place certaine, If I pay him the 10.l. before the day, &c and at another place, and the obligee doe accept thereof, the condition is performed. But in the same case: If I pay unto the Obligee the 10.l. after the day of payment, and the Obligee doe accept thereof, yet the condition is not performed. And when a man is bounden in a greater sum to pay a lesser sum at a place certaine, the Obligee is not bounden to accept of the sum at another place then is appointed in the condition: But yet if hee doe accept of the same at another place it is good. &c. If I.S. be bounden in 20.l. to T.K. to pay him 10.l. And T.K. is endebted unto a stranger in 10. l. And the other obliger by the Commandment of the Obligee paie the 10.l. unto the creditor of the Obligee in allowance of the 10.l. comprised in the condition; the same is a good performance of the condition. And in the same case in an action of debt brought by the Obliger against

M.41.E.3. 20.
H 43 E.3. 3.
17.Ass.p.2
T.9.E. 4. 2.
2.E.4. 3.
M.19.E.4. 1.
T.9. E. 4. 23.
M.2.E.4. 24.
M 31.H.6. 11.
H 27.H.6. 10.
H 9. H. 7. 18.
T.21.E.4. 3.

against the Obligee, the Obligee may make his defence and pray auditum, &c. and lead that he paid the 10. l. unto the Obligee by the hands of the creditor of the Obligee, &c.

749. If a man be bounden in 100. l. to pay 100 markes unto the Obligee, &c. And the Obligee accept of 10. l. of the Obligor in satisfaction of the 100 markes, it is a good performance of the condition, and yet some have said the contrary, because that 10. l. cannot be satisfaction of 100 markes, &c. But that is not materiall in his case, because the Obligee is content therewith, &c. And if the obligee hath received a horse, or a gold or silver ring, or a quarter of wheate, or a cup, &c. of the Obligor in satisfaction for the 100 markes, it is a good performance of the condition of what value soever the horse or, &c. be. But if I.S. be bounden unto T.K. in 200. l. to enfeoffe T.K. of the manno of Dale. and the Obligor doth enfeoffe T.K. of the manno of Sale in allowance of the manno of Dale, and he accept thereof, yet the condition is not performed, because when the condition is to be performed of a thing not comprised within the obligation, it ought to be performed of the same thing comprised in the condition if not that it be in speciall cases.

750. And therefore if a man be bounden in 100 Markes to make a Recognisance of 39 l. unto the Obligee in the Com-

Common pleas at quindena S. Hil before, &c. And the Obligor doth pay 10. l. unto the obligee for satisfaction of the condition, this is no performance of the condition. Tamen quere, because some have said, That the Recognisance is not to be made but for the assurance of 39. l. the which 39. l. cannot be intended of a thing within the obligation.

751. But if the condition of the bond be, that if the obligor make a sure, sufficient, and lawfull estate of and in 20. s. rent issuing out of his manner of Dale unto the Obligee and his heires, to have and perceive the same 20. s. rent to him, and his heires, with clause of distresse, that then, &c. And the obligor doth grant unto the obligee one annuity of 20. s. for 6 yeares, that is no performance of the condition: The same Law is, if the obligor had leased the manor of Dale unto a Stranger for yeares, or for life, in allowance of the grant of rent, according to the condition of the Obligation. And if a man be bounden unto I. S. in 100. l. to grant unto him the rent and farme of such a Mill, &c. if the Rent be granted unto the Obligee to take effect in him by way of retainer, the condition is performed. Cauls part.

H. 37. H. 8. 25.

752. But if a man be bounden in 100. l. to make a Recognisance of 40. l. before such Justices, and maketh them at a certaine day, &c. and with the Seal of the obligee the obligor doth leve a

house

house unto him for the terme of his life in satisfaction thereof, this is no performance of the condition.

753. If Z be bounden in 20.l. &c. to deliver ten quarters of wheate, or foure H.9.H. 7. 18. Horses, or ten Oxen, or forty Sheepe, M.33.H.6. and I with the assent of the obligee pay unto him 5. l. in satisfaction thereof. 24. the condition is not performed, Tamen Quære. &c.

754. And it is to know, that if the obligee be party or privy unto any act done, by which act the condition cannot be performed, then the obligor shall be discharged of the Obligation, if not that it be in speciall cases. As put case: I.S. is bounden in 100.to T.K. Abbot of Westminster, &c. to enfeoffe C. D. of the manner of Dale before such a day, &c. And before the day, C.D. is a Monke professed under the obedience of the same Abbot who is the obligee; in this case the obligor is discharged of the Obligation; But Quære if C. D. be deceased before the day the feofment be to be made, whether I.S. be 11.Ass.p 2 bounden to enfeoffe him or not. But if the condition be to be performed unto a straunger, and it may lawfully and possibly be done: And the obligee be no party nor privy to any act done by which act the condition ought to be performed, then such condition ought to be performed in all things as it is, if not that it be in speciall cases.

755. And therefore if I. S be bounden unto

unto me in 10. l. to pay unto T. K. ten markes before such a day, at such a place, &c. And before the day the obligor doth give unto T.K. a horse in satisfaction for the ten markes, and T.K. doe accept thereof, yet the same is no performance of the condition, for a stranger by his act without my assent shall not take away my duty, &c. The same Law is if the obligor had paid the ten markes before the day, at another place then is comprised in the condition. So shall it be if there be a day appointed certaine in which the payment ought to be, and T.K. doe receive it at another day, &c. 36 H.6. 9.

756. And if a man be bounden unto I.S. in 100 l. to marry his daughter before such a day certaine, notwithstanding the obligor before the day often tender unto the daughter for to marry her, and she refuse, so as the obligor cannot performe the condition, the obligation is forfeited, because the condition was lawfull, and possible to be done, and is to be done unto a stranger, and the obligee did not doe any thing whereby it might not be performed, The same Law is if I be bounden unto C.D in 20.l. that T. shall enfeoffe I. S. of black acre before such a day certaine, and T. doth not infeoffe I.S. before the day of bl. acre, I have forfeited my bond, because that by the condition I have taken upon me that such a feofment shallbe made. 4 H.7.2. 38 H.6.18 20 E.4.2. 30 H.6.12

757. And if I be bounden to T.D. in 10.l to

to enfeeffe Allice Stile of the mannor of Dale before the feast of Easter, and before the condition performed, and before the day I marry Allice Stile, and the mariage doth continue till the day be past, the obligation is forfeit, and notwithstanding that before the feast of Easter, I doe enfeeffe a stranger of the mannor of Dale for to enfeeffe my Wife, and hee doth so, yet I have forfeited my Obligation.

P.3.E.4.8. 758. But if I be bound in 20 l. unto T.K. to appeare before the Justices of the Common Pleas Octabis Michaelis, to answer to such a one in an action there brought against me, &c. and at the day, I come into Court and appeare, and the Plantiffe is essoined, so that I cannot answer unto him, in this case, my bond is saved: But if I be bounden unto T.K. in 4. l. to ride with L. C. such a day unto Dale, and L. C. will not ride that day, I have forfeited my bond, &c. But if I be
P.3.E.4.2. bound unto B. in 10. l. unto the use of T.
M.8.E.4.25 to enfeeffe T. alone of the mannor of Dale, &c. And I doe all that lieth in mee for to enfeeffe him, and hee will not be enfeeffed thereof, my bond is saved Causa patet.

759. If a man be bound in 20. l. unto I. S. upon condition that the obligee shal enfeeffe a stranger of the mannor of Dale before such a day, &c. And the Obligee will not enfeeffe the stranger, &c. the bond is forfeited, notwithstanding that hee, viz. the

the obligee is the impediment that the condition cannot be performed, because that the obligor tooke upon him by the words of the condition, that the obligee should so doe. But if the words of the condition had beene, If the obligee doe enfeoffe a stranger, &c. and the stranger doth require the obligee for to enfeoffe him, and he refuseth so to doe, the Obligation is not forfeited. M.22.E.4.15. 17 E.4.5. 9 H.7.20. 23.H.6.11.

760. If a man be taken upon a Capias, and findeth sureties by bond to appeare Octabis Trin. And the Sherife returne the writ at the day, and the same day a writ of adiornement is directed unto the Justices to adiorne the Court untill Quindena Michaelis. And the Obligor commeth, and sheweth unto the Court, how that he was bound for to appeare at the same day, and prayeth that they would record his appearance, and the Justices will not record his appearance, but bid him keepe his day at Quindena Michaelis, the bond is not forfeited in so much as if hee appeare at Quindena Michaelis, by this appearance hee shall have his bond. And if in the same case the action had beene discontinued, by the deinise of the King before Octab. Trin. and the obligor had not appeared, Octabis Trin. yet the bond had not been forfeited. M.31.H.6.14. M.38.H.6.3.

761. But if I.S. be bounden unto T.K. that G.F. shall appeare Octabis S Trin. in the common Pleas in an action of debt brought by the said T.K. against the M.15.H.7.2. T.9.E.4.25

said G. F. retorneable at the same day, and G. F. doe appeare the same day, and his appearance is not recorded, The bond is forfeited, But if in the same case G. F. dieth before Octab. Trin. the bond is saved because the condition is become impossible by the act of God.

762. And in the same case in an action of debt, brought upon the Obligation, it is no plea for the defendant to say that the writ was not returned, if so be that he that ought to appeare hath day by the Roll: But it is a good plea to say that he who was to appeare was imprisoned at Dale, within the County of Midlesex by the Plantiffe, or at his suit, before the Day of the returne of the writ, and continued there in prison untill the Day of the returne of the writ was past, &c. And the reason is, because hee himselfe is the cause that the Condition cannot be performed.

31 H 6: burre to T. 3. F. 4.

763. If a sole woman seised of Land in fee, doe by deed indented thereof enseoffe a stranger reserving Rent unto her, and her heires, the Rent payable yearely at the Feast of Easter. Et si contingat redditum prædict. a retro fore in parte vel in toto non soluit, quod donque benè liceat, to the feoffor, and his heires to reenter, and the feoffor and the feoffee doe entermary, and the marriage doth continue betweene them for diverse yeares, &c. yet the condition is not broken, because that during the marriage betwixt them the

the rent is in suspence, and the cause of the suspension is, that the woman was a party to the same by her agreement, and during the time that the rent is in suspence it ought not to be paid, &c.

764. But in the same case if the feoffment had beene made upon condition to pay 10. l. unto the woman who is the feoffor at the feast of Easter, &c. And afterwards the feoffor and the feoffee doe intermary before the payment of the money, and before the day of payment, and during the marriage the day doth passe, the condition is performed, because that the money is but a sum in grosse, and a duty, so as it shall be presently extinguished in the husband, because it is but a personall duty, in so much, as if the woman had made a feoffment unto a stranger before the marriage upon such a condition, and the husband during the marriage, and before the day of payment, release all manner of conditions, duties and demands unto the feoffee, by this release the condition, and the duty is extinct, and determined. But if the husband release all entries, and demands unto the feoffee after the day of payment, if the Wife survive hir Husband, shee may enter for the condition broken, notwithstanding her Husbands release, and the reason is, because the condition was broken before the release. at what time the Wife had title of entry into the

Lands, and Tenements, which title of entry may descend unto her heire, &c.

765. But if a sole woman seised of Land, doe thereof enfeoffe a Stranger by deed indented, upon condition that the feoffee shal enfeoffe the woman of 61. acre before the Feast of Easter, &c. And before the Feast of Easter, and before the condition be performed, the feoffor and the feoffee doe entermary, and during the mariage, the day before which the condition ought to be performed passeth, Quere whether the condition be performed or broken; and if the condition be broken the Husband is presently seised of the same Land, in the right of the Wife, &c.

766. And if a man doth enfeoffe mee by deed indented, upon condition that I shall pay unto him 10. l. at the Feast of Easter, And the feoffor maketh mee his Executor, and entreth into Religion, and is professed before the condition performed, and before the day wherein it ought to bee performed, and continueth in Religion untill the day bee past, and afterwards hee is deteringued; Yet I shall keepe the Land for ever, &c.

767. If a man be bounden unto mee in 100. l. to enfeoffe mee of the manor of Dale before such a day; and before the day the Obligor doth enter into Religion, and afterwards the Obligee doth enter into Religion, and the day doth

both come, and then both of us are dereingned, It seemeth that the Obligation is forfeited, because there was a time for the obligor to tender the money, and because the obligor at the first hath disabled himselfe, and all times after till the day before which the condition ought to bee performed incurred, hee remaineth to performe the condition, and the condition is for his advantage, and hee ought to doe the first act, in so much as if the obligor bee not ready upon the Land, nor other for him to make the feofment, and the obligee doth not come thether nor any for him, yet the bond is forfeited, for in such Case in an action of debt brought upon the Obligation, The issue shall bee whether the obligor were ready upon the Land, to make the feofment or not, &c.

768. And if a man bee bounden unto mee in 20. l. to pay unto mee 10. l. at Paules such a day, at which day the the obligor nor any for him come thither, the Bond is forfeited, because the obligor ought to doe the first act, and therefore ought to bee there ready, &c. For if in an action of debt brought upon the Obligation against the obligor, &c. Hee sheweth the condition, and that hee was ready at Paules according to the condition, and that the Plantiffe, nor any for him was there to receive the money; The Plantiffe may say that hee

was there ready to receive the money, without that that the obligor was ready there to pay the same, &c. But if the Obligee bee disabled to take according to the condition it behoveth not the Obligor to tender the performance thereof unto him, if not that it bee in speciall cases.

769. And therefore, if I bee bounden unto a sole Woman in 100.l. upon condition that if I doe marrie her before such a day, that then, &c. And before the day the Woman taketh a stranger to bee her Husband, and the marriage betweene them doth continue untill the day be past, In that case I am not bounden for to tender the performance of the Condition unto her, because she was not of abilitie for to receive the same, &c.

770. And if I bee bounden in 20.l. upon condition, That if I doe enfeoffe the obligee of bl. acre before such a day, that then, &c. And before the condition performed, and before the day, &c. The obligee doth enter in Religion, and is professed, and continueth professed untill the day doth come, In this Case it behoveth not he to be ready upon the Land to make the feofment, &c.

771. If a man bee bounden in 100.l. unto A. S. upon condition that if the obligor doth marry her before such a day, that then, &c. And before the day the

Obligee

Obligee, &c. is a Nunne professed, and after, before the day the Obligor is a Fryer professed, and then the day doth come, the Obligor and the Obligee being both professed in Religion, and afterwards they are both dereigned, The Obligation is not forfeited; The same Law is if they both are disabled at one and the same time, &c.

772. But know. That sometimes the first Act as unto the performance of the condition, ought to bee done by the Obligee, otherwise the Obligor is not bounden to performe the condition. As if a man be bounden unto mee in 10. l. That I.S. shall serve mee In omnibus mandatis licitis & hoestis for a whole yeare certaine, In this Case if I doe not command I.S. to serve mee, by reason whereof hee doth not doe mee service, the Obligation is not forfeited: But if the condition were that I.S. shall bee a good and faithfull servant unto the Obligee for a whole yeare certaine, It beseweth that in this Case I.S. tender his service unto the Obligee, notwithstanding that the Obligee doth not command him any service, otherwise the Obligation is forfeited. But if in such Case I.S. tender his service unto the Obligee, and hee refuse to have any service from him, the Obligation is not forfeited, &c.

773. If a man be bounden in 20. l. unto

unto I. S. upon condition, That if the Obligor goeth unto Rome with the Obligee at the request of the Obligee, That then, &c. In this Case the Obligor is not bounden to goe unto Rome with the Obligee, but at his request, &c. If one bee bounden unto mee in 20. l. That at what time so ever that I shall come unto the Towne of Dale, that it shall bee lawfull for mee to enter into the House of the Obligor there, and if the Obligor doe not suffer mee to continue three dayes, and three nights there, that the Obligation shall stand, or otherwise shall bee void. Now if the Obligor see mee comming unto his House, shut up the doores, and goeth unto another place so as I cannot enter, the Obligation is not forfeited, for in this Case the Obligee ought first to enter, &c.

774. If a Parson of a Church bee bounden in 100. l. unto an Abbot, that if within a certaine time hee will resigne his Benefice for a pention as shall bee agreed betwixt them, that then, &c. And they agree that the Parson shall have a yearely pention of 4. l. In this case it behoveth the Abbot to tender unto the Parson a sufficient deed of the pention, other the Parson is not tied by this Obligation, and Condition, for to resigne. And so in diverse Cases the first act ought to bee done by the Obligee. And sometimes the first act concerning

the

the condition of an Obligation ought to be done by a stranger, &c.

775. And therefore if I bee bounden unto I.S. in 100.l. to stand unto the arbitrament, and judgement, &c. of T.K. and D.C. and they make no award, The Obligation cannot bee forfeited, &c. And if a man bee bounden unto mee in 100.l. To make a sufficient and lawfull estate by the advise of I.D. &c. If I. D. doe not give any advise, and the Obligor doe not make any estate, &c. the Obligation is not forfeited. And if I.D. doe give advise, and the Obligor doth make estate accordingly, the condition is performed, whether the estate bee sufficient or not, or lawfull or not, &c. 7. E. 4. 23.

776. But If a man bee bounden in 100.l. That if hee shall make unto the Obligee a sure, sufficient, and lawfull estate in fee in certaine Lands by a day certaine, That then, &c. In this Case the estate ought to be sure, sufficient and lawfull, otherwise the Obligation is forfeited.

777. If a man bee bounden in 100.l. to make as sure, &c. estate unto the Obligee as shall bee devised by the Councell learned in the Law of the Obligee. &c. In this Case the Councell of the Obligee are to advise the estate, and notice thereof ought to bee given unto the Obligor, otherwise hee is not boun-

den for to performe it, &c. And it it fall if in the same Case the Obligee hath foure men learned in the Law of his Councell. and two of them give advise, and the other two give no advise, The Obligor, in an action of debt brought against him upon the Obligation, may plead Quod Consilium of the Plaintiffe non dedit advisamentum. For the advise in such Case ought to bee given by all the Councellours learned in the Lawes, &c. As if the condition were, That the Obligee, &c. make such estate as the Justices of the Bench shall advise, and there are foure Justices, and two of them give advise, and two give no advise, The Obligor is not bounden by such advise. Tamen quære.

778. But it is to know, That if a man bee bounden in 100. l. unto I.S. to enfeoffe the Obligee such a day of the manno: of Dale, &c. It behoveth the Obligor in this case to bee ready upon the Land, to make the feofment at the last instance of the day appointed, &c. without any request made by the Obliger. And in the same case the Obligor needeth not give notice thereof unto the obligee. Causa patet.

779. But if a man bee bounden unto mee in 20. l. to enfeoffe I. S. a lon: of the manno: of Dale before such a day, In this case the Obligor ought to make the feofment unto I. S. at his peril.

perill, otherwise the Bond is forfeited: But if I doe enfeoffe I. S. upon condition, That hee shall reinfeoffee mee, In this case I ought to make request to the feoffee, otherwise the feoffee is not tied to reinfeoffe mee. But if the feoffment bee made of certaine Land upon condition, to infeoffe a stranger of the same Land, It behoveth the feofee in this case to make a tender of the feofment unto the stranger to whom it is to be performed, &c. 2.H.7.3. 3.E.4.1.

780. If a man grant unto mee annuity payable at a certaine day, and no place is limitted where it shall bee paid, And the grauntour is bounden unto mee in 20.l. that hee shall pay unto mee the Annuitie at every day that it ought to bee paid: It behoveth that the Grauntor seeke mee in what place soever I am, if I bee (Infra quatuor Maria) to pay unto mee the Annuitie, and that is to save the forfeiture of his Obligation; For the grantor was not bounden to pay unto mee the Annuitie by reason of the grant without request, &c. But if the Obligor at the day in which, &c. tender unto me the Annuitie, and praieth mee for to make an acquittance unto him, and I will not make acquittance unto him, by reason whereof hee doth not pay unto me the annuity; yet he hath not forfeited his Obligation, &c.

781. And

781. And if a man bee bounden unto mee in 20. l. to pay unto mee a lesser summe at such a day, and doth not appoint any place where the payment shall bee, The Obligor ought to seeke mee, &c. and to tender the lesser summe according unto the Condition, &c.

782. If a man be bounden in 20. l. to stand unto the award of I. S. &c. and I. S. maketh an award which is void, yet the Obligor ought to performe the same for to save the forfeiture of this Bond, if the award bee not impossible, or against the Law, as to kill a Man, or a Woman, or to burne Houses, or to steale goods, or any such like thing, &c. But the Obligor is not chargeable in an action upon an arbitrament which is void, And in the same Case if I. S. hath awarded that the Obligor pay unto the Obligee 20. s. before the feast of Easter, and the Obligor before the said Feast tender the 20. s. unto the Obligee, and hee refuseth the same and bringeth an action of debt against the Obligor upon the Bond, &c. hee may plead the condition, and the award, and say that hee tendred unto the Obligee the 20. s. accordingly, and that hee refused the same, &c. without tendering this money in Court, because the Obligee might have an action of debt upon the arbitrament for the 20. s.

19. H. 6. 36
33 H. 6. 2.

and

and also because that the 20.s. were not a duty to the Obligee before the arbitrament, &c. 7.E.4.3. 20.E.4.1 22.E.4.25.

783. If a man be bounden in 20.l. to pay 10.l. at a certaine day, and the Obligor doth tender the money unto the Obligee accordingly, and hee refuseth the same, yet in an action of debt brought upon the Obligation against the Obligor, It behoveth the Obligor to plead the condition, and the tender and the refusall, and say, that hee is yet ready to pay the 10. l. and tender the same in Court, because it was a duty before the Obligation, and the Obligor is not thereof cleerely discharged by the Obligee, but hee is bounden by the obligation to pay the same upon a payne of forfeiture of a greater summe, and the Obligee cannot have an action to demand the same, but upon the obligation. The same Law is notwithstanding the lesser sum were payeable at a place certaine, &c.

784. But if the Condition of the Obligation bee of matter without the Obligation, &c. As to enfeoffe the Obligee, or to give unto him a Horse, a Gowne, a Hauke, a Knife, a paire of Spurres, a Lance, or a Cap, &c. at a day certaine, or any other thing which is not parcell of the duty comprised in the Obligation, If the Obligee doth refuse any such thing, &c. In an action of T.18.E.4.9 P.7.E.4.2 M.27.E.3.29.

of debt brought upon the Obligation. The obligor shall plead the condition, and the tender and refusall; but shall not needs to say, that hee is yet ready, &c. But it is said by some, That if the condition of the Bond bee of a Horse, which Horse was due unto the Obligee, before the Bond made, by reason of a sale thereof made by the Obligor unto the Obligee, or other perhaps that the Horse were delivered by the Obligee unto the Obligor for a certaine time, &c. Or by other meanes perhaps the Horse is due to the Obligee by the Obligor, &c. Notwithstanding that in such Case the Obligee doth refuse the Horse, when it is tendred unto him, according unto the condition of the Bond, so as by that the summe comprised in the condition of the Bond is not forfeited, yet the Obligee shall have an action for the Horse as the Case is. But I conceive the Law to bee contrary. Because the Obligee hath Bond for the same Horse, if not that the Horse were first delivered by a matter in writing, &c. And the same Law is, of all other the like things, &c. Mutatis mutandis.

M.S.L. 4. 11.

785. If a man bee bounden in 10. l. to deliver unto the Obligee 20 quarters of Wheate at a certaine day, and it is not appointed in what place they shall bee delivered, The Obligor is not bounden to carry the Wheate with

with him unto every place, but it suffiseth for him to say unto the Obligee, Sir, your Wheate is ready for you, where you will have it to bee brought unto you: And if the Obligee will not appoint unto the Obligor a place where the Wheate shall bee brought, the Bond is saved, &c. And if the Obligor at the day bring the Wheate unto the house of the Obligee, and say unto the Obligee, Sir, I have brought unto you your Wheate according to the condition of the Bond, I pray you receive it, and hee saith unto him, that hee will not receive it there, but hee will receive it at another place, and the Obligor will not carry the same unto the other place, yet the Bond is saved. And in an action of debt brought against the Obligee upon the Bond, hee may plead the condition, and the speciall matter; and not tender the Wheate in Court, &c. And it is to know that if any thing bee compiled in the condition of a Bond, and it is not limitted what person ought to doe the same, Then the Obligor or Obligee, viz. Hee who hath the most skill ought to doe the same: But if neither the Obligor, nor the Obligee have knowledge to doe the same, or if either of them hath severall skill, &c. Then it shall bee done by the Obligor, if not that it bee in speciall Cases, because that the condition of the Bond is for the advantage of the Obligor.

786. And

9.E.4.13. 786. And therefore if a Taylor bee bounden unto mee, &c. upon condition, That if I bring unto his Shoppe three ells of Cloath, which shall bee cut out, and if the Taylor make mee a Gowne thereof that then, &c. And it is not appointed in the condition who shall cut out the Gowne, therefore it shall bee taken, that hee who hath most skill to doe it shall doe the same, which is the Obligor, &c. And if the condition were, That if the Obligee bring three Ells of Cloath unto the Shop of the Obligor, which shall bee measured, and it is not appointed by whom it shall bee measured, Then they shall bee measured by the Obligor, Causa patet, &c.

787. Now is to shew at what time conditions shall bee performed, if no time bee appointed for the performance thereof: And as unto that, Know; That
T.15.E.4. 23. if the conditions bee to bee done onely for the profit, and benefit of a stranger,
M.33.H.6. 51. Then it behoveth that they bee done, and performed within convenient time, if not that it be in speciall Cases.

788. And therefore if a man bee enfeoffed of Land, upon condition that hee shall marry the Daughter of the Feoffor, and no time is limitted when, nor within what time it ought to bee done, the Feoffee ought to performe the same within convenient time, because that

that the Daughter of the Feoffor is to have benefit, and profit by the performance of the condition, viz. Advancement, for it cannot bee intended that the Feoffment was made unto any other intent, &c.

789 If a man bee enfeoffed upon condition, that the Feoffee shall enfeoffe a stranger, it behoveth the feoffee for to tender the feoffment unto the stranger within convenient time, &c. But if a man bee bounden in 10. l. unto I. S. to pay 4. l. unto a stranger, and it is not appointed when the 4. l. shall bee paid, if the Obligor pay it unto the stranger at any time during their lives the Bond is saved. And the reason is, because that the condition of the Bond is for the benefit, and profit of the Obligor. The same Law is if the condition of the Bond bee, That the Obligor shall enfeoffe a stranger of, &c. and no time is appointed when the feoffment shall bee made, &c.

790. And notwithstanding, That it bee commonly said, That the condition of an Obligation shall be always taken for the benefit, and advantage of the Obligor, yet if a man bee bounden upon condition, That if hee or his Feoffees of his manner of Dale grant unto the Obligee 20. s. Rent for the Terme of life issuing out of the same manner, before such a day certaine, That then, &c. M. 21 H. 6. 10. P. 4 H. 7. 6.

&c. And the Obligor hath three Feoffees of his mannor of Dale, and two of his Feoffees grant the Rent unto the Obliger, this is no performance of the condition: And yet the Feoffees of the Obligor have granted the rent: But by these words (his Feoffees) shall be intended all his Feoffees, &c.

791. If a man bee bounden, &c. upon condition, That if the obligor sufficiently prove that it was the Will of C.D. That T.K. should make an estate unto the Obligor of Land in Fee, &c. That then, &c. In this Case it is most for the benefit, and advantage of the Obliger to make proofe by witnesses before some honest men in the Countrie, and yet the proofe ought to bee made by an enquest, for the most sufficient proofe in Law is by a Jury. And the condition doth not mention in what manner the proofe shall bee made, nor before what person, but saith onely that it shall bee sufficientlie proved. And therefore the Law shall say, That it shall bee proved by the most sufficient proofe which is by Enquest: But if the words of the condition are, That hee shall make the proofe before such a one, &c. which are not Justices, &c. Then the proofe shall not bee made by Jury, Or if the Condition bee, That if it bee proved sufficientlie before such a day, &c. Before A. B. and C. D. Justices

stices of our soveraigne Lord the King, and indeed they are Justices of Peace, or Quorum, and not Justices of the one Bench or the other, nor Barons of the Exchequer, nor any such Justices which may make a tryall by Jurie. Then the proofe shall not bee by Jurie if not that the proofe bee to bee made by Inditement. And notwithstanding that the proofe bee to bee of such a thing as may bee tryed by Jury, yet if the proofe bee to be made at such a time, in which they have no power to take an Enquest, the tryall shall not be made by Enquest, &c.

792. If a man bee bounden unto T. K. upon Condition, That if the Obligor doe acquit and discharge the Obligee before the Feast of Easter, &c. of an yearelie Rent of 20. s. againſt R. with which Rent all the Lands of the Obligee are charged unto R. for the terme of his Life. That then, &c. Notwithstanding that the Obligor doe the said Rent unto R. at every Terme it ought to bee paid untill the Feast of Easter bee past, and requireth an Acquitance thereof made unto the Obligee by the said R. in writing sealed. And the same is delivered by R. unto the Obligee as the deede of the said R. yet hee hath forfeited the summe of money comprised in the Obligation, becaus the condi-

on shall bee taken, That hee ought to discharge the Obligee of the said Rent, in the right, viz. to determine the Rent for ever, &c.

793. And it is to know, That if I doe enfeoffe a Stranger of Land upon condition, that hee shall reinfeoffe mee, and no time is limitted when the Feofment shall bee made, Then the feoffee ought to make the Feofment when hee is required if the request bee made at a lawfull time, &c.

44. E. 3. 7. And it is said, That by such Feofment without other condition, The Feoffee is seised unto the use of the Feoffor, and his heires, for by the condition the feoffee is not to have any profit, but the Feoffor is to have backe the Land by the Condition, so as there is not any Condition by which the use may bee altered. Tamen Quære of the use. But it appeareth upon the matter, that the Feofment nor the condition is not made for the benefit of the feoffee, &c.

794. But if the Feofment bee made upon Condition, that the Feoffee shall pay unto the Feoffor ten pounds and no time is limitted when the money shall bee paid, In this Case the Feoffee may performe the Condition at any time during their lives, viz. during the life of the Feoffor, and the Feoffee, for in this Case, the Feoffee

hee is seised of the Land unto his owne use by the reason of this Condition, so hee hath benefit, and profit thereby, and the Feoffor is to have the 10. l. for the Land, &c.

795. If lessee for twenty yeares of a House grant his estate unto a stranger upon condition, that hee shall obtaine the good will of his Lessor, and the stranger openeth the matter unto the lessor, and the lessor saith that hee shall not have but the House which is fallen, that hee, viz. the stranger shall have the same, And after the stranger obteineth the good will of the Lessor of his Graunter, The condition is performed, notwithstanding that the Grauntee did not obtaine the good will of the Lessor of his Grauntor, in three or foure yeeres after the Graunt, so know the condition was unto the profit of the Grauntee: And it is not omitted when it shall bee, and therefore it is sufficient for him to obtaine his good will of the Lessor of his Grauntor within the Terme, And the words of the Lessor of his Graunt unto the stranger shall not change the Condition for a Condition cannot be broken nor determined if not by Acts done betwixt the parties, &c. if not in speciall Cases, &c. 31. 8 E. 4. 16. H. 14. H. 8. 22.

796. And therefore if I doe enfeoffe I. S. to enfeoffe T. K. And I. S. said

saie unto C. D. That hee will never enfeoffe T. K. by these words the Condition is not broken, But if hee had said such words to T. K. the Condition had beene broken. And if R. M. bee
H. 4 E. 3 bounden unto H. S. in twenty pound,
4. upon Condition that if T. A. bee not content at his returne from beyond the Seas with the presentment which the said H. hath made to the said R. to the Church C. in Dale, &c. And that hee then resigne, That then, &c. I. A. commeth unto C. and disagreeth unto the presentment, and saith that hee will that one I. S. his Cosen shall have the same, and praieth the said R. M. that hee will resigne, and hee refuseth. Now if afterwards the said R. M. come unto T. A. unto another place, and say unto him that hee was presented unto the same Church, and demand of him that hee acknowledge the same, and hee say unto him that hee is content therewith, Yet notwithstanding this agreement after the disagreement the Obligation is forfeited. Tamen quære. But if the Condition hath relation unto the Act precedent, and no time is limitted when it shall bee done, yet it ought to bee done when the precedent Act is done if not that it bee in speciall Cases.

797. And therefore if I. S. bee bound

den in twenty pound unto mee upon Condition, that if I doe Enfeoffe him of bl. Acre that then hee will pay unto mee ten pound, &c. in this Case presentlie when I have enfeoffed the Obligor of bl. Acre hee ought to pay unto mee the ten pounds, notwithstanding that there bee no time limitted when it shall bee paid.

798. And if I doe enfeoffe a man of Land upon Condition, That if I. K. give unto him ten Pounds, or goeth unto Rome such a day, &c. That then the Feoffee shall pay unto mee ten Pounds, &c. Now these ten Pounds ought to bee paid when I. K. hath given unto the Feoffee, or gone to Rome before the day limitted, notwithstanding that no time bee limitted when it shall bee paid, because it hath relation unto an Act precedent, &c.

799. If I. S. bee bounden unto T. K. &c. upon Condition that if it happen the goods which T. K. hath delivered to C. D. to bee taken or purloined out of the possession of the same C. D. and then the said C. D. pay and satisfie unto the said T. K. for such goods so taken. That then the Obligation, &c. In this Case the satisfaction for the goods ought to bee made presentlie after the taking or purloining of them out of the possession of the said C. D. &c.

800. And

800. And it is to know, That there is a diversity when the Condition is to bee performed on the part of the Feoffor, or Graunter, &c. and when it is to bee performed on the part of the Feoffee, or Grantee, &c. For when the Condition is to bee performed on the part of the Feoffee, or Grantee, It behoveth him that bee bee not disabled at the time to doe or performe the same. Or if such Feoffee, &c. doe any thing which turneth unto the prejudice unto the title, or unto the profit or value of the Land, &c. The Feoffor may presently enter, or the Graunt shall bee presentlie determined, if the Condition bee annexed unto the Graunt; if not that it bee in speciall Cases.

801. But when the Condition is to bee performed, on the part of the Feoffor or Grantor, notwithstanding that they are disabled to performe the same at any time before the day, in which it ought to bee performed; yet if they are able to performe the same at the day, &c. it is sufficient, if not that it bee in speciall Cases. And therefore if I doe enfeoffe a man upon Condition, that hee shall enfeoffe a stranger before a day Certaine, and the Feoffee before the day is professed a Monke, I may enter presently into the Land, and notwithstanding

that

that the feoffee bee deraigned before the day, yet the Condition shall not bee revived, the same Law is. If the Feoffee were sole at the time of the Feoffment, and before the day, and before the Condition performed hee taketh a Wife, &c. or if hee suffer a stranger for to disseise him, and taketh backe an estate unto himselfe, and unto another, or if hee suffer the Lands to bee recovered against him, it is said that notwithstanding that Execution be not sued, The Feoffor may enter, because it is in prejudice of the Title of the Land, or if execution bee sued forth by force of a judgement, Or if the demandant doth enter into the Land by force of the judgement, The Feoffor may enter. Or if the Feoffee bee bounden in a Statute Merchant, or a Statute Staple, Or graunt a Rent issuing out of the same Land, the Feoffor may enter. So shall it be in all like Cases. And as it is of feoffments upon Condition, so shall it bee of Leases, Graunts, &c. upon condition, Mutatis mutandis, &c. 44 E. 3. 7.

802. But if a man doe enfeoffe a stranger upon Condition, that if the Feoffor doe enfeoffe the Feoffee of bl. Acre, or pay unto him ten pounds before such a day, &c. That then it shall bee lawfull for the Feoffor, and his heires to reenter, &c. and afterwards the

the Feoffor is a Monke professed, and
35.H.6 50. is deraigned before the day, and be-
7.H.4.13. fore the day hee doth tender unto the
Feoffee a feofment of bl. Acre, and hee
refuseth the same, or tenders to pay
him the ten Pounds, and hee refu-
seth to accept thereof, the Feoffor may
reenter, &c. The same Law is of
Leases and Graunts, Mutatis mutan-
dis, &c.

803. If a man grant Annuitie un-
to another, untill hee bee advanced un-
to a Benefice, and the Grauntee ta-
keth a Wife, the annuity is determined,
7.H.4.16. because hee hath disabled himselfe to
take the Benefice: But if a Man bee
bounden unto I.S. in twenty Pounds,
upon Condition, that if the Obli-
gor doe present the Obligee unto the
Church of Dale, at the next time that
the said Church shall become void, not-
withstanding that I.S. taketh a Wife,
and that the marriage doth continue
betwixt them untill the time that the
Church doth become void, yet if the
20 Ass.p.1 Obligor will save his Obligation, hee
ought for to present I. S. to the same
Church of Dale.

804. And it is to know, That
when annuity of 10 markes is graunted
unto a Man, untill hee bee promoted
unto a Benefice by the Graunter, and
it is not expressed of what value the
Benefice shall bee, the Benefice ought

to

to bee of as great value as the annuity or more, and it ought also to bee of as sure estate as the annuity, otherwise notwithstanding that the Grauntee doth refuse it, the annuitie is not determined. For if the Graunter doth tender unto the Grauntee a presentment unto a Benefice which is voyd, to which Benefice the Graunter hath no lawfull title to present, notwithstanding that the Church bee of as great value, or more then the annuitie, and if the Benefice bee such that the Grauntee shall have cure of Soules, if the Grauntee being within the age of twenty foure yeeres, the Graunter tender unto him a presentment unto the the same church, the Grauntee may refuse the same, notwithstanding that the church bee of sufficient value, and notwithstanding that the Graunter hath lawfull title to present unto the same; And if no value of the Benefice bee expressed, It shall alwayes have relation unto the value of the annuity, and not unto the person of the Grauntee.

805. And therefore if I grant unto the Kings Chaplaine annuitie of forty Shillings, untill hee bee promoted by mee unto a convenient Benefice, And I tender unto him a presentation unto a Vicarage worth ten markes by the yeare, and hee refuse the same, the annuitie is determined, &c. But

if

if the Grantor present the Grantee unto a convenient Benefice upon other consideration then to determine the annuity, and it is so expressed in a deede indented made betwixt them, and sealed & delibered as their deede, &c. Notwithstanding that the Grantee doth accept of the presentment yet the annuity is not determined.

10.E.3. Affiz. 157.

806. And it is to know, That the Grauntee may accept of a presentation unto a Benefice conditionallie, &c. if the Benefice bee convenable, &c. And then hee may presentlie when hee seeth, and perceiveth that the same is not convenable hee may refuse the same; But if after that he perceiveth that the Benefice is not convenable, hee bee admitted, hee cannot now refuse the same before induction, but if hee doe not perceive the same before his induction, then hee may refuse it for the same cause before his induction. And notwithstanding that the Grauntee doth accept of the Benefice generally, yet the Annuitie is not determined before hee bee inducted, if not that the cause of the proroging of his induction bee in his owne default, in so much as if the day of payment of the Annuitie bee incurred betwixt after his admission, and his induction, the Grauntee shall have the same, &c.

107. nul

807. And it is to know, That if I grant a Rent, or Annuitie, or other thing, or doe enfeoffe a Stranger of Land, or doe leafe Land unto a Stranger upon Condition, That if hee purchafe Lands or Tenements of the value of ten Pounds by the yeare, that then I fhall reenter into the Land, and if the Condition bee annexed unto the Grannt, that then the Grannt fhall bee voyd and determined: And the Feoffee Grauntee or Leffee, and a Stranger purchafe joyntlie Land, or Rent of the value of ten Pounds by the yeare, yet I may not enter, &c. For notwithftanding that everie joynttenant bee feifed of the whole, and through the whole, yet the fame doth not prove, that the Feoffee, Grauntee or leffee alone hath purchafed Land of the value of ten Pounds, And the intent of the Condition was, That it fhall bee as much in value, viz. of the value of ten Pounds unto the Feoffee, Grauntee or leffee. But if the Feoffee, Grauntee or Leffee hath purchafed Land or Rent, or Houfes, or the reverfion of the yearely value of ten Pounds joyntlie with a ſtranger, And the ſtranger who is the joynt purchafor with him doth releafe unto him all his right in the Land, Rent, or Reverfion ſo purchafed, The Condition is performed; ſo as that I may

well enter. But if such Feoffee, Grantee or Lessee, alone purchase common
21.H.7.28 of the value of ten pounds, yet I cannot enter; for common is not comprised within the words of the condition, viz. within the words of Land or Tenements, &c.

808. And if I. S. seised of Lands of the value of ten pounds, doe grant a Rent charge of forty shillings out of the same Land unto a Stranger, And afterwards I. S. doe enfeoffe such Feoffee, Grantee, or Lessee upon condition, The Condition is not performed: But if the Grantee of the Rent doth release all his right in the Lands whereout the Rent is issuing, unto the Feoffee, Grantee, or Lessee upon Condition, then being seised of the Land by force of the Feoffment of I. S. The Condition is performed, &c. The same Law is, if the Rent were first granted to such Feoffee, Grantee, or Lessee upon Condition, and afterwards such Feoffee, Grantee or Lessee upon condition, had purchased the Land whereout the Rent was issuing, for then hee hath Lands, and Tenements of the same value, &c.

809. And if a man seised of Land of the value of ten pounds, graunt common of Pasture for twenty Oxen in the same Land unto a Stranger, and afterwards doe thereof enfeoffe the Fee-

Feoffee, Grauntee or Lessee upon condition, now the condition is not performed, for Land or other thing Tantum valet quantum vendi potest. And this Land cannot bee sould by the Feoffee unto the value of ten pounds, for if a man sue forth an execution upon a Statute Merchant of the same Land against the Feoffee, Or hath iudgement to recover in value against him by reason of voucher, this Land shall be extended, and the common shall be recouned and deuided, &c.

810. But if I bee bounden unto I S. in a hundred pounds to Enfeoffe him of the mannor of Dale before such a day, and after the deliuery of the Bond as the deede of the Obligor, The Obligor doth graunt a Rent charge of foure pounds issuing out of the mannor of Dale, and afterwards do thereof enfeoffe the Obligee before the day, the Condition is performed: But if hee had tendred a feofment of the moity, or of the third part of the mannor unto the Obligee before the day, &c. The Obligee might well refuse the same, and bring his action of debt upon the Obligation, Causa patet, &c.

811. And if a man bee bounden for to appropriate a Church at his owne costs, and before the appropriation a pention is graunted out of the same, and afterwards before the day hee doth appro-

appropriate the same, the condition is performed, &c. If a man seised of Land doe thereof enfeoffe a stranger upon condition, that if hee, viz. the Feoffee doe take a Wife seised of Land of the value of ten pounds, That then the Feoffor shall reenter. And a sole Woman seised of Land of the value of twenty pounds doth graunt a Rent charge of five pounds issuing out of the same land unto the Feoffee, And afterwards the Feoffee, and she doe entermarry, Quære, if the condition bee performed, for the Land was not of the value of ten pounds, till after the intermarriage, &c.

812. If a man seised of Land doe thereof enfeoffe a stranger upon condition, that if hee purchase Land of the value of twenty pounds, that then the Feoffor shall reenter; And afterwards the Feoffee doth recover Lands of that value in an action auncestrall or possessory, the cause of which action was given unto him after the feofment upon condition. The condition is not performed. Quære if the recoverie bee upon a false title. But if the Feoffee after the feofment doe disseise a stranger of Land of the value of twenty pounds, The condition is performed, notwithstanding that the disseisee doe reenter into the same Land, or doth reenter the same in an assise, &c.

813. If

813. If such Feoffee upon condition bee impleaded of the Land of the value of twenty pounds, of which hee was seised at the time of the feofment, and hee voucheth a stranger by force of a warranty made upon him before the feofment, and the vouchee doth enter into the warranty and lesseth, &c. And the demandant hath judgement for to recover against the Tenant, and the Tenant hath judgement to recover over in value against the vouchee, and each of them hath execution against the other: Now it seemeth the condition is performed, for notwithstanding that the warranty was before the feofment upon condition, yet the title for to recover in value shall not have relation, but unto the vouchee, and hee is in the Land recovered in value by the vouchee, In so much as if the vouchee hath the Land recovered in value by disseisin, The disseisee shall have thereof a writte of Entre sur disseisin en le per against him who recovered them in value, &c.

814. Know, that some have said, when the condition commeth from the Feoffor, and the Feoffee hath done as much as lieth in him for to performe the condition, so that there is no default in him, That it is not reason that hee should lose the Land. And therefore they say, That if I.S. bee seised of Land

in

in fee, and doe thereof enfeoffe T. K. upon condition that hee shall pay unto C.B. twenty pounds before such a day, &c. and hee doth tender to him the money accordingly, and he refuseth the same, They say that T.K. shall hold the Land unto him, and his heires for ever, because the condition commeth from the Feoffor, and no default is in the Feoffee, &c. and it is not reason that by the negligence of a stranger the Feoffee should lose the Land where hee doth not take upon him to make the stranger to receive the money, and it is the folly of the Feoffor to make the feoffment upon such a condition, if not that hee will know that the stranger would receive the money. And they say that the same Law is, If a man seised of Land doth thereof enfeoffe I. S. upon condition that he shall enfeoffe T.K. for a certaine sum of money, and expend the same money for the soule of the Feoffor, And I. S. doth offer unto T.K. a feoffment of the same Land for the same sum of money, and hee refuseth the same, They say that the feoffor nor his heires shall not reenter, but that the Feoffee shall hold the Land to him, and his heires for ever.

M. 19 H. 6. 24. P. 2. H. 4. 2.

815. And also they say, that if I doe enfeoffe I. S. of Land upon condition, that he shall thereof enfeoffe T. K. and I tender a deede of the feoffment unto

unto T. K. and hee doth refuse the same, That neither I nor my heires shall enter, but that the feoffee and his heires shall hold the Land for ever. And they say, that these Cases are not like unto this Case, viz. Where I baile my goods unto I. S. to baile over unto T. K. and I. S. doth tender the goods unto T. K. and hee refuseth to have them, In this Case I shall have my goods againe, because that the property of them was never out of mee, and the propertie thereof was at no time in I. S. But in the Cases before of Feoffment it is otherwise; And also they are not like unto the Case, where a man is bounden in forty pounds that hee shall enfeoffe T. K. of bl. Acre at a day certaine, And the Obligor doth tender the feoffment according unto the condition of the Bond unto T. K. and hee refuseth the same, The Obligor hath forfeited his Bond, because he tooke upon him for to enfeoffe T. K. And the Obligor is bounden for to doe it at his perill, &c. But notwithstanding all these reasons, The Law is contrarie in the Cases before of Feoffments, because that it appeareth by the words of the condition, that the intent of the condition is not, That the Feoffee shall hold the Land unto him and his heires for ever, if the condition bee not performed, and the con-

T. R. 5. a.

condition is not against the Law, nor repugnant unto the Law, nor impossible, And therefore, if it bee not performed the Feoffor and his heires may enter. And sundry Cases are put before concerning this matter to prove the same in diverse places of this treatise of conditions,

P. 2. 1. 4. 2. 816. But if I bee seised of Land, and doe thereof enfeoffe a Stranger, upon condition, that before such a day hee shall give the Land unto a Stranger in taile, and before the day the Feoffee doth tender a gift in taile of the same Land unto the Stranger, and hee refuseth the same, in this Case, the Feoffee shall keepe the Land unto him, and his heires for ever, because that the intent of the condition according unto the words of the condition cannot bee otherwise taken. for notwithstanding that the guift in taile had beene made according to the condition, yet the reversion of the same Land doth remaine in the Feoffee, and his heires, which reversion should be devested out of the Feoffee and his heires, if the Feoffor should enter into the Land, and therefore the Feoffee shall hold the Land to him and his heires for ever. &c.

817. And it is to know, That if a man bee seised of Land and doth thereof enfeoffe a Stranger, upon condition,

That

That the feoffee shall give the same Land unto the feoffor and his Wife in speciall tayle, the remainder unto the right heires of the feoffor, and the feoffor dieth without issue by his Wife, and his Wife not with Child, and the Wife doth take another Husband, and the feoffee doth lease the Land unto the second Husband, and his Wife, for the life of the Wife without impeachment of waste, the remainder thereof unto the right heires of the feoffor; In this Case the condition is performed, And yet the estate is not made according to the words of the condition, &c.

818. And know, That Land, Rent, or Common, &c. unto which a possession in fait is annexed during the estate unto which the condition is annexed in possession, or in right, is chargeable with the condition, in whose hands soever the Land, Rent, or Common shall come, if it come not unto our Soveraigne Lord the King, of which I will not speake, or otherwise if it be not in speciall Cases. And therefore if I be seised of Land in fee, and by deed I enfeoffe A upon condition, and the feoffee is disseised, and the disseisor thereof dieth seised, and his heire is in the Land by discent, in whose time the condition is broken; I may enter for the condition broken. And in the

same Case, it is said, That I may enter upon the heire of the disseisor for the condition broken, before the disseisin notwithstanding the discent. And others thinke the contrary, because that then my title of entry is before the discent, which title of entry shall be bound by the discent. Quære, for if the condition be broken (the Land being in the possession of the feoffee) and afterwards the feoffee doth dye seised, yet the feoffor may enter upon him for the Condition broken before the discent, &c.

22. Ass. p. 49.

§ 819. If there be Lord and Tenant, and the Tenant doth enfeoffe a stranger upon condition, and the feoffee dieth without heire, or is attainted of felony, or murder, or petty treason, &c. so as the Tenancy doth come unto the Lord by escheat; yet the Tenancy doth remaine charged with the condition. But if a man seised of Land doth lease the same Land for life upon condition, and afterwards doth grant the reversion unto a stranger upon condition, and the lessee doth attorne, and afterwards dyeth, and the Grauntee of the reversion doth enter into the Land, he shall hold the Land without any condition, because that the estate unto which the condition is annexed is determined in possession, and also in right. And if one doe disseise the feoffee of the

disseisee,

disseisor, or the heire of the disseisor, or any other person who hath the Land, by unjust title, and doth thereof enfeoffe a stranger upon condition, and the Land is afterwards lawfully devested out of the possession of the feoffee, &c. by him who hath right according to his title, by entry or by action as the case shall require, The Land is discharged of the condition, &c.

820. But if a man seised of Land in fee doth lease the same Land unto a stranger for yeares, and one who hath no right unto the Land doth put out the Lessee, and doth thereof seise, and his heire is in the Land by discent, and the heire doth enfeoffe a stranger of the same Land upon condition, upon whom the lessee for yeares within the terme doth enter claiming his terme; The Lessee shall hold the Land during all the terme discharged of the condition, and yet the estate of the Feoffee upon condition is not altogether determined in possession, for notwithstanding the entry of the Lessee for yeares, the possession of the freehold of the same Land doth remaine in the Feoffee upon condition, &c. 8 H.7.9. 20.E.4.11

821. If I bee seised of Land in fee and doe enfeoffe a stranger thereof upon condition, and my Feoffee doth enfeoffe I. S. of the same Land upon condition, the condition which was annexed

unto

unto the first feoffment is broken, for which if the first feoffor doth enter, and reinfeoffe I. S. without any condition, I. S. shall hold the Land discharged of the condition, &c. Causa patet, &c.

822. And it is to know, That if a man seised of Land in fee doth take a Wife, and during the marriage doth thereof enfeoffe a stranger upon condition, and the Husband dieth, and the feoffee doth endow the wife of the feoffor of a third part of the Land, &c. this third part is discharged of the condition. And if the Woman doe grant her estate unto the feoffee who is in reversion, the condition is presently revived, because that this grant doth enure by way of surrender, yet if the Woman had granted a rent charge issuing out of the same Land, and afterwards had granted her estate unto the feoffee in the reversion, the feoffee should hold the same charged during the life of the Woman tenant in dower; See diverse cases concerning this matter in the Chapters of grants and surrendors. Mutatis mutandis &c.

823. If feoffee upon condition be of Land, and he doth lease the same Land unto a Stranger for life, and the feoffor doth release all conditions, and all demands which hee hath unto the same Land unto him in the reversion; by this release the freehold is discharged

of

of the condition, and if the feoffor had released all conditions, which he had in the same Lands unto the lessee for life, by such release, the reversion is discharged of the condition.

824 But if I. S. bee collector of my Rents of diverse houses, and he be bounden unto mee in 100. l. that hee shall yeeld unto mee a just accompt, and that within forty dayes next after the accompt that hee shall pay all that which he is found in arrearage; and afterwards before any accompt I doe discharge the Obligor of the collecting of the Rent of one house, this is no discharge for the rest, but he ought to collect the Rents of the residue of the houses, and render accompt thereof, &c. otherwise hee doth forfeit his Bond, for that the discharge is for his advantage, &c. If there bee Lord and Tenant by fealty, and by the service to plow a hundred acres of land, and the Lord doth discharge him of the plowing of twenty acres of the same Land, this doth not discharge him from plowing of the residue of the 100 acres, for this discharge is for the advantage of the Tenant; and the service is not so an entire service, but that it may bee severed, &c. 4 H. 7. 6 7 H. 7. 8.

825. But if I be seised of ten acres of Land in fee, and I doe lease the same Land unto a stranger for life, or for yeares, reserving ten shillings rent unto

me, &c. the rent payable yearely at the Feast of Easter; and the lessee doth bind himselfe unto me in a Bond of 100. l. to pay the rent reserved upon the lease justly according to Law, and before any day of payment I doe put the lessee out of part of the Land, and the lessee doth occupy the residue of the Land for the whole yeare, and will not pay any Rent; yet the Bond is not forfeited, for by this putting out of the lessee of parcell of the Land, the whole rent is put in suspence: But if one day of payment be incurred before the Ouster, then the lessee ought to pay the same, otherwise hee hath forfeited his Bond: But if I doe put the lessee before the feast of Easter, out of one acre of the land leased, and doe occupy the same untill the feast of Easter; and then the lessee doth reenter, and doth occupy the Land untill the Feast of Easter, and doth not pay mee any Rent for this latter Feast, the bond is forfeited, Tamen quære.

P. 9 E. 4. 1. P. 21. E. 4. 34.

P. 45. E. 3. 3 M. 44. E. 3. 37.

22 H. 6. 2c.

826. And if a stranger who hath not any right, doth put out the lessee for yeeres of the same land before any day of payment, and keepeth possession thereof untill the day of payment be past; yet the lessee ought to pay me the rent at the day whereon it ought to be paid, otherwise hee hath forfeited his Bond. Causa patet.

827. But if a disseisor doth lease land which

which hee hath by disseisin for terme of life, or for yeares, reserving Rent, payable yearely at the Feast of Easter, and the lessee doth bind himselfe in 10. l. to pay the Rent unto the lessor fully, and the disseisee doth put out the lessee before any day of payment, and afterwards the day of payment doth come, and the lessee doth not pay the Rent at the day, the Bond is not forfeited, for he hath no remedy against the disseisee, because he had a right to enter; But if a day of payment be incurred before the disseisin, it behoveth the lessee to pay the Rent at the day, otherwise he forfeiteth his Bond, &c.

828. If three coparceners be seised of a mannor, and one of them in her own name, and without the agreement of the other coparceners doth lease the whole mannor unto S. for foure yeares, paying five pounds yearely at the feast of Easter unto the lessor, and her heires, and I. S. doth bind himselfe in forty pounds unto his lessor, to pay the Rent reserved, &c. And before any day of payment the two other Coparceners which did not make the lease, doe put out the lessee out of the whole mannor, and keepe the possessiō untill the day of payment of the Rent bee incurred; yet it behoveth the lessee to pay the third part of the Rent reserved to his lessor, otherwise he hath forfeited his Bond, for the two Coparceners,

P. 9. E. 4. 1. M. 11. H. 8. f. P. 20. H. 6. 24.

ners who did put him out, have not right but to two parts of the manner, &c.

829. If a man be seised of two acres of Land in fee, and doe enfeoffe I.S. of one of them by deed with warranty, and I. S. is impleaded of the same acre by a stranger, and I. S. doth vouch his feoffor to warranty, &c. and after the summon ad warrantizandum, &c. awarded, and before the day of the retorne, his feoffor being seised of another acre of Land doth thereof enfeoffe a stranger upon condition, and at the day of English ad warran. retorned, the feoffor doth appeare and entreth into the warranty, and pleades, and the demandant hath judgement for to recover against the tenant, and the tenant hath judgement to recover over in value against the voucher, and the demandant doth enter into the Land in demand by force of the judgement, and the tenant by fate (as hee ought) hath execution against the feoffee upon condition of the same acre whereof he was enfeoffed by the voucher mesne, betweene the awarding of the Engl ad warrantizandum & the day of the retorne of the same writ, The tenant, viz. I.S. shall hold this acre discharged of the condition, because hee is in the same acre by a title before the feoffment upon condition, for his title untill this acre doth begin by the voucher, which was

was before the feoffment upon condition, &c. And as it is said of land, so shall it be of a Rent, or common, and of other things which lie in grant, Mutatis mutandis, &c

830. Now is to shew what persons shall take advantage of conditions when they are executory, and what persons shall take advantage of conditions when they are executed. And know, That no manner of persons shall take advantage of conditions executory if they be not parties or privies, &c. And not all manner of privies, for privies in estates shall not take advantage of conditions Executories, &c.

831. And therefore, If a man seised of one acre of land doe lease the same acre for life, upon condition that the lesse shall pay 20 s. at a day certaine, the remainder of the same acre of Land unto I. S. in fee, I. S. shall not take advantage of this condition by way of entry, and yet he is privy in estate, for his estate and the estate of the lesse were made at one and the same time, &c. Nor privies in fait shall not take advantage of conditions executories: And therefore, if a man seised of land, doth lease the same acre for life upon condition, &c. and afterwards doth grant the reversion unto a stranger in fee, and the lesse doth attorne, yet the grantee shall not take advantage of this condition by way

way of entry, notwithstanding that hee hee privy in fait, and he is said privy in fait, because hee hath the reversion by grant, &c. For privies in Law shall not take advantage of conditions Executories.

832. And therefore, if there be Lord and tenant, and the tenant doth leafe the tenancy for life unto a stranger upon condition, and afterwards the tenant dieth without heire, and the reversion doth escheat unto the Lord, The Lord shall not take advantage of the condition by way of entry. And the Lord in this case is said privy in Law, because he hath his estate in the reversion by the Law onely, viz. by escheat. But privies in right shall take advantage of conditions Executories, &c.

833. And therefore, if lessee for yeares hee of Land, and hee granteth his estate unto a stranger upon condition, &c. and maketh his Executors and dieth, in this case, his Executors shall take advantage of this condition, by way of entry, for they are privies in right, for if the condition be broken, and they do enter into the Land, &c. they shall have the same in the right of the testator unto the use of his soule, &c.

834. If a man seised of Land for the terme of twenty yeares in the right of his Wife, doth leafe the same land unto a stranger for ten yeares rendring

rendring Rent, &c. and for default of payment, to reenter, and afterwards the Husband dieth and then the Rent is behinde; I conceive that the Wife shall have the Rent, and not the Executor, because that the Rent was to the Husband by way of reservation, and the Wife hath the remaine of the Terme; but notwithstanding that the Wife shall have the Rent, yet shee shall not enter for the condition broken, Causa patet, &c.

835. If an Abbot doe enfeoffe a stranger of land, which hee hath in the right of his House upon condition, his Successor shall take advantage of the condition by way of entry if it bee broken, because that hee is privy in right; The same Law is of Deane and Chapter, and such like persons Mutatis mutandis. And privies in blood as the heire of the feoffor, &c. shall take advantage of conditions Executory by way of entry, &c And the parties unto the conditions shall take advantages of conditions by way of entry as in the cases before is shewed. And as it is said of Land, so shall it bee of things which lie in grant, Mutatis mutandis. And when it behoveth such persons to take advantage by way of entrie, or to make a demaund, Master Littleton hath shewed in his third Booke in his Chapter of estates upon condition, Mutatis mutandis.

40. Ass. p. 11. M. 4. H. 6. 8.

836. And

T. 20 H. 6. 22.
T. 6. H. 7 3.

836. And it is to know, that if a man ſeiſed of Land in fee, doe leaſe the ſame Land for life, or for yeares, reſerving ten ſhillings Rent payable yearely at the Feaſt of Eaſter, and if the Rent be behind in part or in all by the ſpace of a moneth after any day of payment, in which it ought to be paid. That then it ſhall be lawfull for the leſſor, and his heires to reenter, &c. And the leſſor commeth upon the Land at the laſt inſtant of the Feaſt day of Eaſter, and demandeth the Rent (as he ought) if he will take

20. H. 6. 31.

a vantage of the condition, and the leſſee is not tied to be upon the Land to pay him the Rent, but at the laſt inſtant of the day on which it ought to be paid, and the leſſor is there to demand the Rent, and there is no body there to pay it unto him, notwithſtanding this demand, if the leſſor will take advantage of the condition by way of entry, it behoveth him to make the like demand the laſt inſtant of

M. 2. H. 7. 14.

the day of the moneth, and if hee doe make ſuch demand, and the leſſee is there, or other for him ready to pay him the Rent, hee ſhall not enter notwithſtanding that there was no body ready to pay him when he made the firſt demand; And yet if hee had not made the firſt demand, and that there was no body ready for to pay him, yet his

he could not reenter, if the lessee or any for him be upon the Land at the time of any of the demands ready to pay the Rent, and doth tender the Rent unto him who demanderh the same (as he ought to doe,) &c. And if hee refuse it, Then the lessor, nor any for him can reenter. And if (when the first demand was made) there was no body ready for to pay the Rent, and mesne, after the demand, and before the last day of the moneth, the lessee doth tender the money unto his lessor of the Land, and the lessee doth refuse the same, and at the latter end of the last day of the moneth, the lessor doth make another demand of the Rent upon the land, and there is no body ready for to pay the same, The lessor may reenter notwithstanding the refusall of the Rent at the time of the tender made unto him of the land; because hee was not bounden to receive the same off of the land. Tamen quære thereof. But if he had received it, then he could not reenter notwithstanding that the receipt therof were off of the land. T. 11. H. 6. 5.

837. If meane, after the first demand, and before the latter end of the moneth the lessor doe happen to come upon the Land, and the lessee doth tender unto him bering upon the Land, the Rent. It is said that the lessor is bounden for to receive it, because the

the Rent was then due, and it was tendred unto him in the place where it ought to be paid, &c.

838. And it is to know; That if a man bee seised of a Mansion House, with divers pasture Fields, arable Lands, and Woods thereunto appertaining, in fee, and doth lease the House with all the Fields and Woods unto a stranger for life, or for yeares, reserving the Rent of ten pounds payable yearely at the Feast of Easter, &c. And for default of payment thereof, That it shall bee lawfull for the lessor, and his heires to reenter, In this Case, the lessor may distreine in every parcell for the whole Rent; But if hee will take advantage of a Reentry, hee ought to demand the Rent at the Mansion House, because it is parcell of the thing let, and it is the most convenient place for the Lessee to stay, to tender the Rent, &c. And if such lease bee made of diverse Fields, and Woods, without any Mansion House, If the lessor will take advantage by reentrie, It behoveth him openlie to demand the Rent aven parcell of the Lands leased, which by intendment of the Law is as convenient for the lessee to stay there to bee ready to pay the Rent, as any other place parcell of the things let is, and not privately to demand the Rent in one parcell

cell of the wood, or in other private place of a Field, to the end the lessee may not have knowledge of the demand, notwithstanding that he be upon the Land ready to pay the Rent, &c.

839. And it is to know, that when conditions are executed, Strangers shall take advantage of them by way of plea, &c. As put case a man seised of Land, doth thereof enfeoffe a Stranger upon condition, and afterwards the condition is broken, for which the feoffor doth enter into the Land, and doth thereof enfeoffe, T. K. upon the feoffee upon condition doth reenter, And T. K. doth bring an assise against him, and the feoffee upon condition doth plead the feofment simply without any condition, and giveth colour to the Plaintiffe, &c. The Plaintiffe may plead that the feofment was made upon condition and shew the same in certaine, and that the feoffor did enter for the condition broken, &c. and did enfeoffe him, &c. This is good matter of title, &c. And yet the Plaintiffe is a Stranger unto the feofment upon condition, &c. M. 44. E. 3. 8. P. 45 E. 3. 6

840. It is commonly said, That when any person doth enter for a condition broken That he shall be seised in the same manner and course as hee was when hee did depart with his possession, upon which the condition in fait was made. And therefore, if the

leſſee upon a condition in fact of Land doth grant a Rent charge, iſſuing out of the ſame Land, or doth make a recognizance, or is bounden in a Statute merchant, or in a Statute ſtaple, &c. And the Conuſee or Obligee hath the Land whereof the feoffment was made upon condition in execution, and afterwards the condition is broken, for which the feoffor doth reenter, The intereſt and eſtate of the conuſee or Obligee is defeated and avoyded, and the Land alſo is diſcharged of the Rent graunted by the leſſee, and yet the condition was broken after the grant, Recognizance, and Obligation: And the reaſon is, becauſe hee made the feoffment of the Land upon a condition expreſſed in the Deed, diſcharged of the Rent, and of ſuch execution. And for the condition broken hee may reenter, and have the Land back in the ſame plight and condition as it was when hee did depart with the eſtate upon condition. Notwithſtanding it doth not follow in every caſe, That when any perſon doth enter for a condition in fact broken, That hee ſhall bee ſeiſed in the ſame courſe, and in the ſame plight and condition, as hee was when hee did depart with the eſtate unto which the condition was annexed.

841. And therefore if a man ſeiſed of Land doth leaſe the ſame unto a ſtranger

ſtranger for life, and the leſſee for life doth thereof enfeoffe a ſtranger upon condition in fait, and afterwards the condition is broken, and the leſſee who is the feoffor doth enter, Now, hee is not ſeiſed in the ſame plight as hee was at the time of the feofment made, for then the leſſor could enter upon him, and ouſte him of his Terme, but now the leſſor may enter upon him, and put him out of the Terme, for by the feofment his leſſor had title of entry, which title of entry is not diſcharged by the reentry of the leſſee for the condition broken, Cauſa patet. 39. Aſſ. p. 15.

842. If Ceſtuy que uſe in fee of certaine Lands doth enter upon his feoffee according to the Statute of Richard 3 in ſuch caſe provided, and doth thereof enfeoffe a ſtranger upon condition that hee ſhall pay unto him ten pounds before the Feaſt of Eaſter next following, and the feoffor doth enter for the condition broken, in this caſe, the uſe is not revived, for by the feofment made upon condition the uſe was determined and avoyded, &c. And if there be diſſeiſor of Land, and he doth dye thereof ſeiſed, and his heire is in the ſame Land by diſcent, And the diſſeiſee doth enter upon the heire and put him out of the Land, and doth therof enfeoffe a ſtranger upon condition, and the heire of the diſſeiſor doth enter upon the feoffee, 41. Aſſ. p. 4. Mich. 11. E 2 and

and the disseisee doth bring a writ of entree, Sur disclin. en le per against the heire of the disseisor, and doth demand the same Land and doth recover by confession, and hath execution thereof, and the feoffee upon condition doth reenter upon him, and afterwards the condition is broken, for which the feoffor doth enter, Now, the feoffor is not seised in the same course as hee was at the time of the feoffment made, for at the same time the heire of the disseisor might have entred upon him, and
20. Ass. p. 1. put him out of the Land; But now he cannot so doe, &c.

843. If there be Lord and tenant, and the Lord doth disseise the Tenant of the Tenancy, and doth thereof enfeoffe a Stranger upon condition, and afterwards the condition is broken, for which the Lord doth enter, upon whom the Tenant doth enter, the Seignory is not revived, and yet if the Tenant had entred upon the Lord before the feoffment made by him, the Seignory had beene revived. Causa patet. The which proveth that the Lord is not seised in the same course and plight after his entry for the condition broken as hee was at the time of the feoffment made upon condition, &c.

844. And it is commonly said, that when a man doth enter by reason of a condition in Law, That hee shall

take

take the Land as hee finds it; and the same is not so in all Cases. For if a man seised of Land doth lease the same for life, there is a condition in Law annexed unto the Land, viz. That if the lessee doe discontinue the reversion, that the lessor shall enter. And also another condition by Statute Law annexed thereunto, viz. That it shall not bee lawfull for the lessee to doe wast in the Land leased, &c. If in such case the lessee doth enfeoffe a stranger of the Land leased, and the feoffee doth grant a rent charge out of the same Land, and the lessor doth enter upon the feoffee, hee shall hold the Land discharged of the Rent, because his title of entree doth commence by the feoffment which was before the grant: But if the lessee had granted the Rent before the feoffment, and then the lessor had entred upon the Feoffee, hee should hold the land chardged during the life of the lessee, Causa patet; &c. And if the lessee had committed wast, and had granted a Rent charge unto a stranger after the wast done, and the lessor had brought his action of wast, and recovered, the lessor should hold the Land discharged of the Rent; But if the grant had beene made before the wast done, Then hee should hold the same charged during the life of the lessee, &c.

845. And if there be Lord and Tenant, and the Tenant doth enfeoffe an Abbot of the Tenancy; and the Abbot doth grant a Rent charge issuing out of the Tenancy, and the Lord doth enter within the yeere & day after the alienation made according to the Statute of Mortmaine. The Lord shall hold the Tenancy discharged of the Rent granted by the Abbot, &c. But if the Tenant had granted a Rent charge issuing out of the Tenancy before the alienation in Mortmaine, and the Lord had entred within the yeare after the alienation, &c. In this case the Lord should have holden the Tenancy charged with the Rent, &c.

21.H.6.58.

FINIS.